

Entering the Australian Judiciary: Gender and Court Hierarchy

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There is considerable attention to increasing judicial diversity along a range of dimensions, in particular, gender. Women remain underrepresented in many courts, especially at the higher levels of the judiciary. A comprehensive socio-legal study of the Australian judiciary compares experiences and attitudes of women who have become judicial officers at different levels of the court hierarchy. Understanding their personal and professional backgrounds and the features that attracted them to the judiciary has important implications for addressing gender disparity. Effective recruitment and selection must focus on the expectations and experiences of women in relation to particular judicial contexts.

INTRODUCTION

Despite recent increases in the proportion of women, the judiciary is still a male-dominated institution in many respects. Women account for approximately one-fifth to one-third of the judiciary in countries that follow the common law system such as Australia, the United States, Canada, or the United Kingdom (with some exceptions for particular courts) (Office of the Commissioner for Federal Judicial Affairs Canada 2011; Judicial

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Appointment Commission of England and Wales 2010 (JAC); American Bar Association Commission on Women in the Profession 2009). In Australia, although the overall percentage of women has increased, proportions of women in the higher courts remain consistently smaller than in the lower courts (Australasian Institute of Judicial Administration 2010; Thornton 2007, 1996; Thomas 2005). In countries based on the European structure, such as France or Germany (Schultz and Shaw 2003), or in Latin America (Bustamante 1991), overall proportions of women vary more widely, as do percentages of women in higher courts, though women tend to be concentrated in the lower ranks of courts in Europe (Williams and Thames 2008; Thomas 2005).

To understand and remedy the underrepresentation of women in the judiciary, research must examine early stages of entering the judiciary, asking why women and men are (or are not) attracted to the judiciary (Judicial Appointment Board for Scotland 2009 [JAB]; JAC 2009; Genn 2008; Thomas, Balmer, and Lane 2006; Williams 2006; Feenan 2005). Particular levels of the judiciary must also be considered. Genn (2010) points out that “[a] principal trap when talking about ‘the judiciary’ is that of scope and generalisation. When we refer to the ‘the judiciary’, which judges are we talking about?” (154). It is also important to consider women specifically; the experiences and attitudes of women and their paths and obstacles to entering the judiciary may be different from those for other underrepresented groups (Hurwitz and Lanier 2008). Similarly, it is necessary to recognise differences among women (Hunter 2005; Boigeol 2003; Mather 2003; Rhode 2003; Wells 2003; Martin, Reynolds, and Keith 2002; Menkel-Meadow 1995).

This article investigates ways gender interacts with becoming a judicial officer at different levels of court using data from two national surveys of the Australian judiciary conducted in 2007. After analysing personal and social characteristics and professional backgrounds of the Australian judiciary, it examines the reasons why women (and men) who have become judicial officers consider entering the judiciary and the qualities they regard as more or less attractive when they decided to undertake judicial work. This analysis distinguishes characteristics and attitudes of women magistrates who sit in the lower or “inferior” first-instance courts from women judges who sit in the higher or “superior” courts as well as comparing them with their male colleagues. This approach recognises that gender can be understood as a contingent social process rather than an inherent immutable characteristic and so may be performed or manifested or perceived differently in different contexts (Collins, Manning, and Carp 2010; Kenney 2010). Gendering is part of a process of structuring workplace, roles, status, and society (Jurik and Siemsen 2009; Holmes 2007) and so also contributes to the construction of judging, though it may do so differently in different court settings. Women’s reasons for entering the judiciary and their attitudes towards judging may differ from each other’s as well as from men’s.

The findings sometimes challenge and sometimes reinforce the binary construction of male/female judicial differences and the importance of court

hierarchy in understanding the process of becoming a judge or magistrate. The results of this empirical research provide a more nuanced understanding of gender and judging and suggest strategies to increase the gender diversity of the judiciary.

THE AUSTRALIAN JUDICIARY

Australia is a federal system, with national courts and a court system for each state and two territories operating separately. There are approximately 1,000 judicial officers, organised into more than twenty-five different courts. The terms “judiciary” or “judicial officer” refer to all members of the Australian judiciary, judges and magistrates. In this article, the term “magistrate” describes members of the judiciary who preside in first-instance state courts. The term “judge” refers to those who preside in the state supreme and district courts or in any Commonwealth court.

Commonwealth courts include the High Court, the Federal Court, the Family Court, and the Federal Magistrates Court. The High Court is the final court of appeal from state and Commonwealth courts. The Federal Court’s jurisdiction is mainly trade practices and administrative law, while the Family Court handles divorce and issues related to property and children. The Federal Magistrates Court handles less complex matters within the Federal Court and Family Court jurisdictions. (Federal Magistrates are included in the National Survey of Australian Judges rather than the National Survey of Australian Magistrates, as the nature of their work and their status within the Australian Constitution as Chapter III judges more closely matches that of the other Commonwealth judges rather than the magistrates who preside in the first-instance state courts.)

Each Australian state and territory has a supreme court and a magistrates or local court. Supreme courts hear appeals from both levels of lower courts as well as preside over very large civil matters and especially serious criminal cases. Magistrates courts in the Australian states and territories are first-instance courts of general jurisdiction. These magistrates are paid judicial officers, nearly always full time, with legal qualifications, and appointed until a fixed retirement age, usually sixty-five years (Roach Anleu and Mack 2008). They sit alone without juries, in regional and remote areas as well as in capital cities; those who appear in these courts are often unrepresented. The volume and pace of work is substantial; 90% of all civil and criminal cases are initiated and finalised in the lower courts (Australian Government Productivity Commission 2011; Mack and Roach Anleu 2007; Roach Anleu and Mack 2007, 2005b). Five states have an intermediate trial court (the district or county court), which hears criminal jury trials and civil matters without juries. Some jurisdictions have specialist courts, such as land and environment courts, industrial commissions, or children’s courts, which may operate as separate courts or as a branch of a generalist court.

The work of the higher courts in which judges preside (Commonwealth courts and state and territory district and supreme courts) differs in important ways from the nature and demands of work in the lower first-instance state and territory courts in which magistrates preside (Mack and Roach Anleu 2010b, 2007). These differences suggest that the opportunities for judicial office and the reasons for entering the judiciary may differ for women and men.

RESEARCH DATA AND METHOD

The entry of women into the Australian judiciary is addressed through findings from two national surveys conducted in 2007, which together cover the entire Australian judiciary. The National Survey of Australian Judges was sent to all 566 judges throughout Australia; 309 surveys were returned, a response rate of 54.5%. The second National Survey of Australian Magistrates was sent to 457 magistrates throughout Australia; 242 surveys were returned, a response rate of 52.9%.

The judges and magistrates who responded are generally representative of the judiciary as a whole, in terms of level of court, gender, age, and time on the bench.¹ Survey responses reflect the proportions of women in the judiciary at the time of the survey: women are 25% of the respondents to the judges survey and 33% of the respondents to the magistrates survey; 29% of all respondents overall indicate they are women. These percentages are based on responses to a question in the survey that asked respondents to tick one of two boxes: "male" or "female." Three respondents did not answer this question, two judges and a magistrate. The average age of the Australian judiciary (the population) at the time of survey was 57.2 years, which is the same as the average of all respondents (the sample). The average time on the bench for the whole judiciary was 8.9 years; the average time on the bench for the respondents was 8.8 years.

There are two caveats about representativeness. The judges who responded appear generally representative in terms of age, though that cannot be calculated fully, as baseline date of birth data for the judiciary as a whole is not available. There is some variation in the jurisdiction of magistrates, with a slight overrepresentation of responses from magistrates from New South Wales, compared with magistrates from other jurisdictions.

Conducting two surveys allowed questions and terminology appropriate to each level of court and questions applicable across all levels of the judiciary. The surveys were conducted as mail-back questionnaires. Because of very strong concerns from the judiciary about confidentiality, no tracking or identification was used; the identity of those who returned the surveys and those who did not is unknown. All completed surveys are anonymous.

The surveys included open-ended questions seeking general comments about their judicial careers or about other issues raised in the survey. Quotations are given verbatim, as written in the survey booklets, though information that might identify a respondent has been removed.

Comparing women magistrates and women judges entails comparing male magistrates and male judges along the same dimensions, resulting in the construction of four cohorts: female magistrates, female judges, male magistrates, and male judges (see Figure 1).

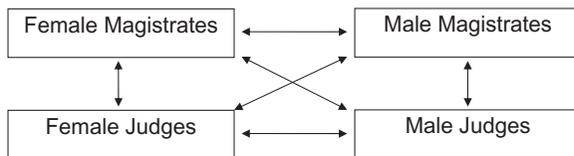


Figure 1. Gender and Courts: Four Cohorts.

As shown by the various arrows in Figure 1, comparisons can be made in several different ways: by gender within a particular court level, within one gender group across courts, or diagonally, across gender and court boundaries. These multifaceted comparisons demonstrate complexities in understanding gender and judging.

JUDICIAL APPOINTMENT PROCESSES

In asking why women become judicial officers, or enter different levels of the judiciary, “the opportunity and the decision to become a judicial officer is made within a specific context of laws and practices about judicial appointment” (Russell 2006, 421). In Australia, the judiciary is appointed by the executive government of the state or territory in which each court sits or by the national government for national courts. Qualification as a legal practitioner, usually for a minimum period of time, and being below the mandatory retirement age are the only legal requirements for appointment to judicial office (Roach Anleu and Mack 2005a).

There is widespread commitment to the principle that appointment should be on merit (Evans and Williams 2008; Roach Anleu and Mack 2005a), but the formal legal rules and processes for appointment do not implement this goal in a transparent way in Australia (Williams 2008; Handsley 2006; Sackville 2005; Davis and Williams 2003a; Wood 1999). There is no legally binding or generally accepted statement of what constitutes merit for judicial appointment. There is no special training for entry into the judiciary and no examination process.

In most Australian jurisdictions, there is no legally required process of inviting applications or measuring candidates against formal criteria or statements of competencies though governments sometimes call for expressions of interest which describe desirable qualities.² Judicial appointments result from a secretive process leading to an invitation to become a judge (Evans and Williams 2008; Williams 2008; Handsley 2006) often called a “tap on the shoulder” (Handsley 2006, 135).

This closed process contributes to the limited number of women in judicial roles (Evans and Williams 2008; Roach Anleu and Mack 2005a; Davis and Williams 2003a). Most of those in a position to identify suitable candidates, such as the attorneys general or the heads of the courts, are male. Research in Northern Ireland finds that males tend to be ignorant of the ways in which the judiciary is constituted as masculine and lack awareness of the absence or underrepresentation of women, accepting it as the norm (Feenan 2007). A process of self-nomination can present challenges for women, as they tend to be less aware of formal and informal processes for entering the judiciary (Genn 2008; Feenan 2007). Women may see their gender as a disadvantage in judicial appointment, which can deter them from putting themselves forward (JAC 2009).

There has been considerable attention to improving formal selection processes (Genn 2008; Feenan 2007, 2005; Malleson and Russell 2006; Guarnieri and Pederzoli 2002). Australian judicial selection processes are inconsistent with the practices in New Zealand, Scotland, England and Wales, and Canada, and with appointments to senior public positions in Australia (JAC 2010; JAB 2009; Sackville 2005; Davis and Williams 2003b). Some research indicates that there has been a slight increase in the appointment of women to the courts in England and Wales following changes there (JAC 2010, 2009; Genn 2008; Thomas, Balmer, and Lane 2006).

In the United States, there are varied processes at state and federal levels, ranging from partisan and non-partisan elections to so-called merit selection processes and appointment by the executive (Flango et al. 2009; Guarnieri and Pederzoli 2002). The explicitly politicised nature of U.S. judicial processes is a distinctive feature affecting judicial diversity strategies (Lawyers' Committee for Civil Rights under Law 2009, 2005; Williams 2009). However, a substantial body of U.S. political science research has found that "while the number of women in the eligible pool of judges and the size of court affect women's representation, selection systems do not" (Williams 2006, 105; see also Hurwitz and Lanier 2008). European countries generally have a career judiciary. Entry is into the lower ranks of the judiciary, based on formal examinations or assessments of relevant skills and qualities; movement into higher courts is by promotion (Malleson and Russell 2006; Schultz and Shaw 2003; Guarnieri and Pederzoli 2002). These variations in judicial appointment process and context require some discrimination when using research from different countries about the influences affecting women's entry into judicial office (Thomas 2005).

GENDER DIVERSITY IN THE JUDICIARY

The need for greater diversity within the judiciary, and specifically the appointment of more women, rests on varied grounds. Some assert difference between women and men, while sameness is also stressed, particularly adherence to judicial norms (Bazelon 2009; Lithwick 2009; Evans and Williams

2008; Feenan 2008; Hunter 2008; Kohen 2008; Maleson 2006a; Davis and Williams 2003b; Menkel-Meadow 1995; Neave 1995; Cooney 1993; Resnik 1988). Earlier arguments for including women within a previously all-male judiciary raised the possibility that women might incorporate a different voice into the exercise of judicial authority (Neave 1995; Davis 1992; Wilson 1990) or bring different perspectives, based on different life experiences, perhaps including greater empathy or compassion (Lithwick 2009; Menkel-Meadow 1995; Neave 1995; Douglas and Laster 1991; Martin 1990; Resnik 1988). More recent claims for women in the judiciary point out the importance of preventing the loss of the “juridical talent in the female half of the population” (Russell 2006, 434) and the need to provide equal career opportunities for women (Kenney 2004). Increasing the appointment of women to the bench may change the masculine culture of the courts themselves (Jilani, Songer, and Johnson 2010; O’Connor and Yanus 2010).

Increasing judicial diversity “is necessary in order to maintain public confidence and trust, that is, to ensure the legitimacy of the judiciary as a whole” (Rackley 2002, 609; see also Kenney 2008b; Handsley 2006; Thomas 2005). Women on the bench reflect the society being judged and so maintain public confidence (Genn 2008; Maleson 2006b, 2003a; Thomas 2005; Rackley 2002). Courts as gendered institutions jeopardise their own claims of neutrality and impartiality (Thomas 2005; Maleson 2003a).

A key strategy for increasing diversity is to remove barriers excluding the best-qualified candidates. As Genn (2010) observes, “it is . . . no longer acceptable for an institution of such power and influence to appear to exclude well qualified candidates who are neither male nor white (nor barristers)” (153). However, there are risks in emphasising gender diversity in judicial appointment. If the women appointed are seen as token or lacking merit, or, if the percentage of women is regarded as too high, there may be a risk of losing public confidence (Boigeol 2003). Emphasising the need for women in the judiciary can imply that only women have a gender, which then raises concerns about bias (Minow 1992), in contrast to the presumably interchangeable benchmark white men “who are vested with impartiality, neutrality and objectivity” (Kenney 2010, 439). The recognition that gender matters, in judicial selection and in judging, exposes the contested nature of the judicial role and the core concepts of impartiality and neutrality (Maveety 2010; Genn 2008; Maleson 2006a; Thomas 2005; Rackley 2002).

A key aspect to improving gender diversity and judicial selection is self selection (JAB 2009; JAC 2009; Genn 2008; Feenan 2005). Understanding the features that attract women and men into different positions will produce insights into perceptions of the judicial role as well as potential strategies to improve gender diversity in the judiciary.

Data from the two Australian surveys allows us to investigate and map a large number of similarities and differences. Specifically, the research allows comparing women judges with women magistrates along many dimensions important to gender diversity in the judiciary: personal and social character-

istics, professional background, and important factors in their decision to consider and to undertake a judicial position.

PERSONAL AND SOCIAL CHARACTERISTICS

There are a range of personal and social characteristics thought to be indicators of diversity or homogeneity within the judiciary (Silius 2009; Rhode 2003; Martin, Reynolds, and Keith 2002). Extensive demographic and professional background information is available about the judiciary in the United States, such as the Federal Judicial Center's biographical information (Federal Judicial Center 2011) or various directories (Duke University Law School 2010). In Australia, there is no publicly available background information on judicial officers (Campbell and Lee 2001). The national survey data discussed here provides the only systematic information available on the personal and social characteristics and professional background of the Australian judiciary.

Increasing the numbers of women in the judiciary, at least in Australia, does not appear to increase diversity along other important dimensions such as race, ethnicity, class, religion, or regional background. (The surveys did not ask about disability or sexuality.) Women magistrates and judges are generally similar to each other and to male judges and magistrates in these respects. This also appears to be the case in other jurisdictions where increases in the proportion of women are not matched by increases in the proportions of other underrepresented groups (JAC 2010; JAB 2009; Thomas 2005). Hurwitz and Lanier (2008) indicate that this was the case in the United States, but recently this gap has closed.

The Australian survey data draws on responses from those who have actually become judges and magistrates. These findings are not compared with data from those who are eligible to become magistrates or judges and have chosen not to seek or take up judicial office or those who have attempted to become magistrates or judges and not succeeded (see Williams 2009, 2008, 2006; Genn 2008; Thomas, Balmer, and Lane 2006). Such a comparison is not possible. There is no similar baseline data for the Australian legal profession (Lamb and Littrich 2007; Hunter 2003a), and the judicial appointment process does not allow identification of those who have refused or been unsuccessful in obtaining a judicial position. Indeed, there is no comprehensive current data on the Australian legal profession, whether by gender or by other characteristics such as ethnicity or age (see Australian Bureau of Statistics 2008). There is some data from individual states, for example, New South Wales (Law Society of New South Wales 2011; Lamb and Littrich 2007; Ministry for the Status and Advancement of Women (NSW) 1995), one study published in 1992 (Roach Anleu 1992), and another compilation from 1986 cited in Lamb and Littrich (2007). (In comparison, the American Bar Association provides extensive data for the United States as does the Canadian Bar Association for Canada.)

Thus, it is not possible to establish the extent to which shared characteristics of the Australian judiciary are characteristics of the pool of candidates for judicial office or result from self selection, judicial selection processes, a combination, or some other process altogether. In this sense, gender appears to be the most visible element of diversity in the Australian judiciary. While there is a need for greater diversity in the judiciary on other dimensions that reflect the wider Australian population, this finding highlights the importance of analysing gender diversity in itself.

AGE

Considering similarities and differences in relation to age illustrates the varied comparisons between women magistrates and women judges and their male colleagues. Age and gender patterns are also important as they address the conventional stereotype of judges as older and male. Women are generally younger than their male colleagues at their court level; magistrates, male or female, are generally younger than judges. The disaggregated results for the four separate cohorts display this pattern clearly (Table 1).³

Table 1. Age (Average and Median[#])**

Female Magistrates (n = 80)	50	Male Magistrates (n = 160)	57
Female Judges (n = 77)	54	Male Judges (n = 225)	61

[#]In this table the mean (average) and medians are identical numbers

**using Anova $p \leq 0.001$; $F = 77.72$

Source: National Survey of Australian Magistrates 2007, National Survey of Australian Judges 2007.

Women, whether judges or magistrates, are, on average, younger than the average male in any level of court, revealing a strong age difference between men and women in the judiciary as a whole. The most striking contrast is between female magistrates and male judges, a pattern that recurs with other characteristics and attitudes expressed in the surveys.

The distribution of age differences among female and male judicial officers appears even more marked when represented other than by medians and means. While judges and magistrates aged less than fifty-eight are almost equally divided between men and women, nearly all judges and magistrates aged fifty-eight or older are men (89%). This partly reflects recency of appointment, as well as the pattern of women being appointed at younger ages. These age similarities and differences may be salient in assessing views and experiences of the different cohorts, especially the contrasting views of female magistrates and male judges.

MOTHER'S EMPLOYMENT

The only social background characteristic that differs markedly among the cohorts is mother's participation in paid work (Tables 2 and 3). Women who have achieved a place in the Australian judiciary—magistrates and judges—have more experience of mothers in paid work, and less experience of mothers not in paid work, compared with their male colleagues. This life experience suggests a very concrete basis for a greater awareness of gender issues and perhaps of the need for, or normalisation of, a woman's capacity to earn an independent income.

Table 2. Mothers Always/Almost Always in Paid Work*

Female Magistrates (n = 80)	28%	Male Magistrates (n = 160)	18%
Female Judges (n = 76)	29%	Male Judges (n = 224)	13%

* $p \leq 0.005$; Chi-square = 13.51

Source: *National Survey of Australian Magistrates 2007, National Survey of Australian Judges 2007.*

Table 3. Mothers Rarely/Never in Paid Work**

Female Magistrates (n = 80)	39%	Male Magistrates (n = 160)	47%
Female Judges (n = 76)	38%	Male Judges (n = 224)	64%

** $p \leq 0.001$; Chi-square = 26.65

Source: *National Survey of Australian Magistrates 2007, National Survey of Australian Judges 2007.*

The pattern for males is less consistent. While similar low proportions (fewer than one in five) of male magistrates and male judges report mothers always/nearly always in paid work, a higher proportion (nearly two-thirds) of male judges report mothers rarely or never in paid work compared with male magistrates (just less than one-half). This suggests that male judges have a different social class background than male magistrates. The different family experience also may be related to the age difference between older male judges and younger male magistrates.

PROFESSIONAL BACKGROUND

The professional background of women magistrates and judges reflects the pool from which each level of the judiciary is and can be drawn. First, the number of women in the pool affects the numbers of women in the judiciary

(Thomas, Balmer, and Lane 2006; Williams 2006). Second, understanding the legal professional experience women and men bring to their judicial roles helps identify whether that experience matches the distinctive tasks of each court and so whether the construction of the pool of potential appointees is appropriate. In Canada, enlarging the pool by appointing from outside the civil litigation bar was significant in increasing numbers of women in the judiciary (Bellis 2005). Emphasising the relevance (or irrelevance) of particular areas of practice to a successful judicial career at each level of court may encourage women, traditionally excluded from judicial roles, to be more confident about entering the judiciary.

AREAS OF LEGAL PRACTICE

Nearly all magistrates and judges in Australia have experience in legal practice. In the surveys, respondents were asked to indicate in which of four areas of law they had worked: criminal defence, criminal prosecution, family, and other non-criminal areas. (See Question 35 in the Appendix.) These practice areas were chosen based on responses to a previous survey of magistrates in 2002 (Roach Anleu and Mack 2009) as well as limited generally available information about the judiciary. “Other non-criminal” was used as a broader term than “general civil”. Respondents had the opportunity to expand on this category. Frequently mentioned kinds of non-criminal non-family areas of practice included “civil”, “general”, “commercial”, “industrial”, “personal injury”, and “administrative law”. The question did not ask how long respondents had worked in each area, only if they had worked in an area.

Magistrates and judges, male and female, report a wide experience of areas of practice. Very few report experience in only a limited area of legal work. While there are some differences between female judges and female magistrates, these often reflect differences between magistrates and judges generally, which in turn appear to be a consequence of differences in the nature of work. For example, women judges report less practice experience in criminal law than female magistrates. Gender differences within each level of court are mostly too slight to regard as noteworthy.

POSITIONS IN LEGAL WORK

Nearly all respondents report working as a solicitor at some stage in their career (Table 4). This in part reflects the system in most Australian jurisdictions where admission to practice is as a solicitor and barrister. Solicitors deal directly with clients, handle preparation for litigation, and undertake all non-litigious legal work. Barristers appear in court instructed by solicitors or provide legal opinions to solicitors; they do not deal directly with clients. Though it is possible to practice only in one capacity, relatively few choose to do so, except in New South Wales. Even there, solicitors have some rights of appearance in court (Lamb and Littrich 2007; Hunter 2003a).

Table 4. Positions in Legal Work**

Kinds of legal work	Magistrates		Judges	
	Male (n = 161)	Female (n = 81)	Male (n = 230)	Female (n = 77)
Solicitor	83%	91%	74%	81%
Barrister/counsel	39%	36%	87%	74%
Judge/magistrate/tribunal member [other than current role]	17%	31%	29%	55%
Government/policy, legal associate to a judicial officer, and/or law teaching/research	31%	48%	41%	48%

Percentages add up to more than 100 because of multiple responses.

Percentages are of respondents, not responses.

** $p \leq 0.001$; Chi-square 124.174

Source: *National Survey of Australian Magistrates 2007, National Survey of Australian Judges 2007.*

The proportion of women magistrates and judges with experience in each kind of position is higher than that of their male colleagues, except for experience as a barrister. This pattern suggests that women in each level of the judiciary have wider experience of different roles in legal work both inside and outside legal practice.

The much higher proportion of barristers among female judges compared with female magistrates reflects the informal norms and criteria for appointment to the higher courts; experience and a strong reputation at the bar are seen as essential (Hunter 2003b). The slightly smaller proportion of solicitors among male judges also reflects work at the bar as an essential implicit criterion. This emphasis on the bar, with its traditions of hegemonic masculinity, has constituted a significant barrier to the appointment of women to the higher courts (Hunter 2003b). Appointments to the higher courts from the ranks of solicitors only began in 1987 (Lamb and Littrich 2007). As in Canada, widening of the pool beyond the bar may be significant for women's entry into the Australian judiciary, as the proportion of women judges with experience as barristers is lower than their male colleagues (Table 4).

Both barrister and solicitor categories include work in private and public capacities, such as commercial law firms or government legal practice. Overall, eight in ten women and men report experience in the private sector, while about half of women report public sector experience compared with one-third of men. (Tables not given.)

Disaggregating the four cohorts for public sector experience shows a dramatic contrast between female magistrates and male judges (Table 5).

Nearly two-thirds of female magistrates report public sector experience, compared with only about one-quarter of male judges. Limited data on the

New South Wales legal profession indicates that lower percentages of women compared with men are in private practice, while greater proportions are in government or in-house corporate work (Lamb and Littrich 2007). This pattern may reflect more meritocratic professional recruitment into the public sector or that public sector employment is more woman and family friendly than the private sector, providing better maternity leave or flexible working hours (Ministry for the Status and Advancement of Women (NSW) 1995). It could be that women with public sector experience may be better known to those in government making appointments.

Table 5. Public Sector Experience**

Female Magistrates (n = 81)	64%	Male Magistrates (n = 161)	44%
Female Judges (n = 77)	47%	Male Judges (n = 230)	27%

**p ≤ 0.001; Chi-square 26.65

Source: *National Survey of Australian Magistrates 2007, National Survey of Australian Judges 2007*.

Women judges are by far the largest proportion reporting previous judicial or tribunal experience, much greater than male judges and all magistrates (Table 4). Less experience among magistrates might be expected, given the fewer opportunities for lower court experience before appointment to the magistracy. However, the proportion of female magistrates reporting this experience is higher than male magistrates. Women may have to establish their capacity for decision making or exercising judicial type authority, either to feel confident of seeking judicial office or to be considered for judicial appointment. For example, research in Texas indicates feeling qualified or not qualified for judicial appointment is more important for women in relation to a judicial career (Williams 2009).

About half of women judges and women magistrates report some government or academic research and policy experience, compared with a slightly smaller proportion of male judges and somewhat smaller proportion of male magistrates (Table 4). As women magistrates and judges report greater experience in the public sector (Table 5), this could indicate a greater breadth of interest in law and policy.

TIME IN LEGAL PROFESSION BEFORE APPOINTMENT

Time before judicial appointment can be an important aspect of entering the judiciary. It may provide an opportunity to acquire and demonstrate skills and qualities relevant to judicial work. It is also important for perceptions of readiness to move up to the judiciary and/or of having simply put in the time and waited your turn.

Formal requirements for time in practice before judicial appointment range from five to ten years (Roach Anleu and Mack 2005a).⁴ Actual average times before appointment are somewhat longer. Female magistrates are appointed, on average, fifteen years after admission to practice, compared with nineteen years for female judges (Table 6). There is relatively little time difference between women and men before appointment to the magistracy, while there is a substantial gender difference for judges. Women are appointed to the higher courts with about six years less time in practice than male judges.

Table 6. Years between Admission to Legal Practice and First Judicial Appointment (Mean)**

Female Magistrates (n = 74)	15	Male Magistrates (n = 147)	17
Female Judges (n = 70)	19	Male Judges (n = 217)	25

**using Anova $p \leq 0.001$; $F = 59.55$

Source: *National Survey of Australian Magistrates 2007, National Survey of Australian Judges 2007.*

The pattern for age at appointment is similar (Table 7).

Table 7. Age at First Judicial Appointment (Mean)**

Female Magistrates (n = 78)	43	Male Magistrates (n = 157)	45
Female Judges (n = 75)	45	Male Judges (n = 221)	50

**using Anova $p \leq 0.001$; $F = 32.22$

Source: *National Survey of Australian Magistrates 2007, National Survey of Australian Judges 2007.*

As can be seen from these tables, male judges are distinctive, being notably older at the time of first judicial appointment and having a longer time after admission to practice before appointment, compared with the other three groups. Some have characterised this late appointment of senior men as the retirement policy for leading barristers (Sexton and Maher 1982), reflecting the generous benefits available in the higher courts (see below). Alternatively, this pattern could be characterised as “early” appointment for women, implying that women are somehow less qualified or that some notion of fairness means that women should have to wait as long for judicial appointment to the higher levels as men have done (Hunter 2004). There is no reasonable basis for treating the male pattern as the benchmark or norm, or implying that there is some male entitlement to appointment at a certain career stage. Neither view is justified in light of the merit or qualifications needed for judicial office. As the survey data shows, while older male judges

are still a substantial proportion of the judiciary overall, the prototype or template of a judicial officer may be changing.

Data for applicants to the lower courts in England and Wales shows larger proportions of women among younger applicants, and that more are seeking judicial positions after a shorter period in practice, a characteristic closely related to age (Thomas, Balmer, and Lane 2006). In Canada, women were also appointed to the judiciary at a younger age, reflecting their relative recency of entry into the legal profession and the pool of potential judicial candidates. As the pool of eligible women has increased, however, the age difference at appointment has decreased (Bellis 2005).

The shorter time female judges have spent in practice has implications for recruitment of women into the judiciary. Given the limited number of women senior legal practitioners (Lamb and Littrich 2007; Hunter 2003a) from whom appointments to the higher courts are predominantly drawn, the relatively rapid appointment of women to the bench may create an absence of experienced women at the bar. Hunter (2003b) showed that the percentage of women appointed to judicial office in New South Wales has increased more sharply than women barristers. If women in the judiciary are perceived as having jumped the queue, they may be regarded as lacking legitimate entitlement to exercise judicial authority, even among their own colleagues. The consequences of these attitudes can be quite harsh (Hunter 2004, 2003a). On the other hand, if women are being appointed to the higher courts at a younger age than their male counterparts, they may have longer careers in the judiciary, which will contribute to the creation of a critical mass of women in the judiciary (Collins, Manning, and Carp 2010).

RECENCY OF APPOINTMENT

The appointment of women to judicial office in Australia is relatively recent; however, the pattern is slightly different for judges than for magistrates. The proportion of women in the higher courts, among the respondents to the survey, has remained relatively stable, at about one-quarter, for at least the last fifteen years (Table 8).⁵ However, a dramatic shift appears in appointment of women to the lower courts.

Table 8. Time on the Bench and Gender

	Judges			Magistrates		
	0–5 years (n = 89)	6–13 years (n = 123)	14+ years (n = 88)	0–5 years (n = 80)	6–13 years (n = 72)	14+ years (n = 85)
Female	28%	24%	23%	44%	50%	9%
Male	72%	76%	77%	56%	50%	91%

Source: *National Survey of Australian Magistrates 2007, National Survey of Australian Judges 2007.*

Until fifteen years ago, very few women were appointed to the magistracy; then, there was a substantial jump, so that women and men were appointed in roughly equal proportions during a brief period. In the last five years, the proportion of women being appointed has dropped slightly. The increase in the appointment of women coincides, in some jurisdictions, with changes in the structure and qualifications of the magistracy, requiring qualification for admission to practice as a minimum standard and allowing appointments from the ranks of legal practitioners, effectively doing away with the promotion of magistrates from the ranks of clerks of the courts as the primary, if not sole, route into the magistracy (Roach Anleu and Mack 2008, 2007).

These changes in appointment patterns, and the explicit goals of increasing gender and other forms of diversity, may link to strong variations in views about gender as an advantage or disadvantage in judicial appointments. A research report for the Judicial Appointment Commission (England and Wales 2009) found that “[b]eing male was overwhelming seen as a positive influence by women, compared with men—who saw being male as neutral” (72). On the other hand, “men . . . saw being female as positive while women . . . saw being female as an overwhelmingly negative influence” (JAC 2009, 72). Findings from Scotland are similar (JAB 2009).

The belief that women are appointed more frequently to the higher courts appears to have caused some frustration among male magistrates in Australia. In 2007, one magistrate who desired an appointment to a higher court commented:

I would love to be a District Court Judge, but in our State, only females are afforded the career path of being so elevated. (Bitter, but true!)

This comment implies that a move to a higher court would be welcome, but the respondent believes this is not an option because of gender. However, the proportion of women appointed to these courts has remained relatively steady, at about one-quarter, for many years (Mack and Roach Anleu 2010a).

In summary, women’s areas of practice experience are similar to their male colleagues in the same level of court. Slightly higher percentages of women and men magistrates report criminal defence and family law experience and somewhat less experience in other non-criminal areas. Women magistrates and women judges bring somewhat wider experience of different professional roles, and a greater proportion of women judges report previous judicial or tribunal experience. Male judges, as a group, are older at their time of appointment and had been in practice longer before judicial appointment compared with the other three cohorts. Male magistrates, as a group, are the longest serving judicial officers. The recency of appointment of women, especially to the magistracy, is dramatic. Only 9% of magistrates who have been in office for fourteen years or more are women, while about half of all magistrates appointed in the last thirteen years are women. The increase in appointment of women to the higher courts is more gradual and the total percentage is lower.

The recency of women's appointment to judicial office, especially the magistracy, and the slow increase in the proportions of women in the higher courts raises the question of why women and men enter the judiciary and whether their reasons differ for different levels of court.

WHY DO WOMEN AND MEN BECOME JUDGES OR MAGISTRATES?

Considerable attention has been given to improving judicial selection processes (Ministry of Justice (UK) 2010; Evans and Williams 2008; Hurwitz and Lanier 2008; Kenney 2008a; Malleon and Russell 2006; Rackley 2006; Feenan 2005; Thomas 2005; Malleon 2003b). Until recently, however, there has been relatively little attention to asking why women (or men) might be attracted to judicial office, particularly where entry into the judiciary comes after a career in the legal profession (Genn 2008; Williams 2008, 2006; Feenan 2005; cf. Thomas 2005).

Women and men, magistrates and judges in our research describe the decision to become a magistrate or judge as an affirmative desire to undertake that role, pulled into the work by qualities associated with the work and the position itself, rather than pushed into it by dissatisfaction with previous occupations or positions. Research from other jurisdictions identifies similar features. Genn (2008) finds that the main attractions for those who have become or might be in the pool of candidates for the High Court are the opportunity to be the decision maker, less or different stress compared with practice, the prestige or recognition, and the idea of public service or giving something back to the community. Those who had accepted judicial appointment also indicated intellectual challenge or interest, financial security, and a temperament more suited to the bench. In the United States, Williams (2009) finds that attorneys and judges view judicial service differently. All seek the opportunity to make a difference and see the relatively low pay as an undesirable feature; however, attorneys value prestige, while judges value the nature of the work. All are deterred by partisan elections.

A judicial career is not a long-standing ambition for most magistrates and judges in Australia, and there are no significant differences among the four cohorts. At least half of magistrates and judges, male and female, indicate that a long-standing desire to become a judge or magistrate was *not* important in their decision to move into the judiciary. Nearly two-thirds of female judges indicated no long-standing desire for this position. This could reflect a number of the considerations that are thought to affect ambition for judicial office, including professional characteristics such as recency of entry into the legal profession; political experience, such as engagement with the government making the appointment; perceptions of judicial office, including barriers; and personal characteristics, such as life circumstances (Williams 2009, 2008; Thomas 2005). The possible need for greater encouragement for women is supported by research examining the importance of a direct approach to those who choose to enter the judiciary.

CONSIDERING JUDICIAL OFFICE

The most important element by far, in the initial decision *to consider* becoming a judge or magistrate, was a personal approach to the prospective judge or magistrate by someone in the court or government—the “tap on the shoulder”. Nearly two-thirds of all respondents identified this as a very important or important reason, in response to a survey question that asked about a number of possible factors. (See Question 39 in the Appendix.) This result is consistent with research on the higher judiciary in Scotland and England and Wales (JAB 2009; Williams 2009). Genn (2008) suggests that the invitation was needed to encourage or flatter those who are making a financial sacrifice and who regarded entering the judiciary as a public service. Thomas, Balmer, and Lane (2006) suggest that direct contact and encouragement would be needed to increase applications from minority solicitors to lower court judgeships. Research in the United States also emphasizes the importance of active recruitment in the context of the overtly political process of judicial election or appointment (Merola and Gould 2010; Lawyers’ Committee for Civil Rights under Law 2009).

Our Australian research finds that the “tap on the shoulder” was important to three-quarters of male and female judges, compared with just under half of male and female magistrates (Table 9).

Table 9. Personal Approach to Magistrates/Judges by Someone in Court or Government (Important/Very Important)**

Female Magistrates (n = 76)	47%	Male Magistrates (n = 149)	43%
Female Judges (n = 73)	75%	Male Judges (n = 223)	78%

**p ≤ 0.001; Chi-square = 58.73

Source: *National Survey of Australian Magistrates 2007, National Survey of Australian Judges 2007.*

Other possible influences (such as newspaper advertisements, professional contacts, close friends, family members, former clients, approach by the judge or magistrate to someone in the court or government) were relatively unimportant to all respondents in considering a move into the judiciary, though there were some differences between judges and magistrates. For example, newspaper advertisements were identified as not applicable by nine in ten judges, men and women, and not important or not applicable by about seven in ten magistrates. This suggests the very limited impact of such advertisements, though their use is relatively recent, especially in the higher courts. Many survey respondents may have undertaken judicial office before advertisements were used. The greater use of advertisements inviting applications or expressions of interest for the magistracy may change perceptions of what is appropriate and perhaps reduce the need for direct approaches.

Family members were important or very important to only small proportions of respondents in considering a judicial career, but were most important to male judges (44%), though much less so to female magistrates (23%). The meaning of “family members” in considering judicial office is somewhat ambiguous. It may indicate legal family connections or it may indicate awareness of the impact of the changed position, especially income and time, on family. Research in Australia in 1977 and 1978 found that 40% of lawyers in Victoria came from families in which there was at least one lawyer (Sexton and Maher 1982, cited in Lamb and Littrich 2007). Darbyshire’s (2007) research found very little direct influence of relatives in law in the decision of her sample to take up the study of law, though indirect family connections were often important in getting a position at the bar. Professional contacts were, overall, no more important than family, though more so to magistrates, male and female, than to judges.

THE DECISION TO BECOME A MAGISTRATE OR JUDGE

Both surveys asked magistrates and judges to indicate the degree of importance of a list of factors in their actual decision *to become* a judge or magistrate. (See Question 2 in the Appendix.) Response categories were very important, important, somewhat important, not very important, and not important. The response items in the question have been grouped into four categories:

- the intrinsic qualities of the work itself: kind of work, intellectual challenge, and diversity of work;
- altruistic social aspects: value to society or desire to improve the court system;
- extrinsic features: working conditions (salary, job security, and benefits) and more lifestyle-oriented qualities (compatibility with family life, hours, location);
- career path elements: prestige, desire for a change, or dissatisfaction with previous position.

The use of intrinsic and extrinsic aspects or dimensions of work is proposed by Gruneberg (1979) and developed further by Rose (2003) in relation to job satisfaction (Roach Anleu and Mack 2009). Factor analysis confirms the validity of these groupings, showing that intrinsic and altruistic features form one factor, extrinsic features separate into two factors indicated by the sub-categories described, and career path elements form a fourth factor.

For all cohorts, the intrinsic qualities of the work itself were, by far, the most important influences on their decision to enter the judiciary. Career path elements, as a group, were the least important. Social value qualities were slightly more important to women in the judiciary as a whole, while working conditions as a group were slightly more important to men.⁶

These views were summed up by one survey respondent (female judge) who wrote:

It is wonderful to have the opportunity to do such responsible, intellectually satisfying work which can make a real difference to the lives of ordinary citizens.

When responses are disaggregated to reflect the views of specific cohorts, important similarities and differences emerge. A detailed examination of specific elements within each broad category illustrates the complexity of views that can arise among the four cohorts.

Intrinsic Qualities

This category emphasises the nature of judicial work itself, recognising that work will differ for judges of the higher courts compared with magistrates. Over nine in ten respondents in all cohorts, men and women, judges and magistrates, agree on the very great importance of the *kind of work* as the reason for undertaking judicial office (Table 10). This element was the most important for all four cohorts. Work was the most appealing aspect of the judicial role to the potential applicants studied by the JAC (2009). Interestingly, Williams (2009) finds that those who have become judges value the nature of the work, while attorneys identify what they see as the tedium of judicial work as a barrier to entering the judiciary.

Table 10. Intrinsic Qualities of Judicial Work (Important/Very Important)

	Judges		Magistrates	
	Males (n = 226–230) ⁺	Females (n = 75–76) ⁺	Males (n = 158–160) ⁺	Females (n = 81)
Kind of work	91%	93%	92%	93%
Intellectual challenge	85%	91%	79%	89%
Diversity of work**	60%	60%	64%	84%

Diversity of work** $p \leq 0.001$; Chi-square = 17.04

⁺The number of respondents is given as a range as not all judges/magistrates who completed the survey responded to all questions.

Source: *National Survey of Australian Magistrates 2007, National Survey of Australian Judges 2007.*

Intellectual challenge or interest was also a major attraction for the Australian judiciary at all levels, with at least eight in ten of each group identifying this as important or very important. This is also an attraction for appointment to the High Court mentioned by those Genn (2008) interviewed.

Diversity of the work was important to a very high proportion of female magistrates (84%), compared with about six in ten of the other three cohorts, a highly significant difference. Women magistrates may have greater expectations of this aspect of their work than other judicial officers.

Altruistic Social Value

Earlier research finds some enthusiasm among Australian magistrates for making a difference in peoples' lives and contributing to progressive social change (Roach Anleu and Mack 2007; Laster and Douglas 1995). Genn (2008) found that a desire to give something back and to "do justice" were important reasons to take up judicial appointment among those she interviewed (9), and similar findings are reported by the JAC (2009). Williams (2009) identifies a "desire for public service or . . . to make a difference" as important to judges as well as to attorneys within the pool of potential judicial candidates (163), and this was a frequently identified desirable characteristic of serving as a judge, by men and women, though more often by women.

A majority of survey respondents in all four cohorts see value to society as important (Table 11), and it is the third most important aspect for the judiciary, as a whole, after kind of work and intellectual challenge, and equal to job security. Regardless of level of court, however, significantly higher proportions of women, especially magistrates, identify this quality as important or very important to their decision to take on judicial office, compared with their male colleagues.

Table 11. Value to Society (Important/Very Important)*

Female Magistrates (n = 80)	83%	Male Magistrates (n = 159)	61%
Female Judges (n = 73)	78%	Male Judges (n = 227)	65%

* $p \leq 0.005$; Chi-square = 13.68

Source: National Survey of Australian Magistrates 2007, National Survey of Australian Judges 2007.

The higher proportions of women who are influenced by this feature of judicial work may reflect the greater proportion of women judges and magistrates who report some work in research, government, or policy positions, who may take a wider view of the relationship of law, courts, and society.

The pattern for the other altruistic element, *desire to improve court system*, is similar but less striking (Table 12). This feature is substantially more important to women magistrates than to the other three cohorts, though a higher proportion of women regard this feature as important or very important within each court than their male counterparts.

Table 12. Desire to Improve the Court System (Important/Very Important)*

Female Magistrates (n = 81)	56%	Male Magistrates (n = 160)	38%
Female Judges (n = 76)	42%	Male Judges (n = 226)	34%

* $p \leq 0.005$; Chi-square = 13.06

Source: National Survey of Australian Magistrates 2007, National Survey of Australian Judges 2007.

This response pattern could perhaps be better read as a sequence. There is little difference moving from male judges to male magistrates to female judges, then a bigger separation between these three cohorts and women magistrates, whose views contrast most sharply with male judges. These views may reflect different attitudes towards the judicial role—a more active obligation rather than a more passive duty to work within the system.

Extrinsic Features

For three aspects of working conditions—*benefits*, *salary*, and *job security*—women express views consistent with their male colleagues in the same level of court (Table 13).

Table 13. Selected Working Conditions (Important/Very Important)

	Judges		Magistrates	
	Males (n = 226–230) [†]	Females (n = 73–76) [†]	Males (n = 158–161) [†]	Females (n = 76–81) [†]
Benefits**	51%	51%	30%	26%
Salary**	34%	39%	60%	56%
Job security	64%	64%	74%	76%

Benefits** $p \leq 0.001$; Chi-square = 26.6

Salary** $p \leq 0.001$; Chi-square = 31.2

[†]The number of respondents is given as a range as not all judges/magistrates who completed the survey responded to all questions.

Source: National Survey of Australian Magistrates 2007, National Survey of Australian Judges 2007.

Higher proportions of judges—men and women—identify benefits as a reason to become a judge, while higher proportions of magistrates—men and women—value salary in the decision to become a magistrate. It is not surprising that judges value benefits so highly, given the substantial super-

annuation and other entitlements they receive, compared to magistrates (Mack and Roach Anleu 2006). Though judges' salaries are higher than those of magistrates, salary was much more important to magistrates in their choice to become a magistrate. This may reflect perceptions of alternative income levels and opportunity in other available legal occupations and/or the position held before becoming a judge or magistrate.

While higher proportions of magistrates value job security, compared with judges, this difference is not statistically significant. Genn (2008) identifies job security as an attraction of a judicial career, among those who accepted judicial appointment, though it is not mentioned as an attraction by those who were still in legal practice.

Extrinsic features also include lifestyle qualities—hours, compatibility with family responsibilities, and location (Table 14). Exactly half of women judges and women magistrates identify *hours* as important, while smaller but different proportions of male judges and male magistrates express this view.

Table 14. Lifestyle Working Conditions (Important/Very Important)

	Judges		Magistrates	
	Males (n = 226)	Females (n = 74–75) ⁺	Males (n = 157–159) ⁺	Females (n = 81)
Hours	33%	50%	41%	51%
Compatibility with family responsibilities	47%	52%	50%	52%
Location**	41%	47%	25%	35%

Hours $p \leq 0.01$; Chi-square = 11.73

Location** $p \leq 0.005$; Chi-square = 14.13

⁺The number of respondents is given as a range as not all judges/magistrates who completed the survey responded to all questions.

Source: National Survey of Australian Magistrates 2007, National Survey of Australian Judges 2007.

This feature is least important to male judges, followed by male magistrates. In light of the older age of male judges and the high proportion with wives whose main occupation is home duties, male judges may be less concerned about hours of work. Hours may be more important to women magistrates and women judges, as they are younger and may be more likely to have children (especially women magistrates) and other household commitments (Mack and Roach Anleu 2010a).

This interpretation suggests that these cohorts would have different responses to the element *compatibility with family responsibilities*. However, the survey responses indicate nearly identical proportions (half) of men and women, magistrates and judges regard this aspect as important or very

important to their decision to undertake judicial office. (There is no difference when only the very important responses are considered, so this is not a difference of intensity.)

What this data does not disclose is why this aspect of work was important (or not important) to about half of each cohort. It may be that most women have already managed to balance family responsibilities and their legal career. Interestingly, Williams' (2009) research in Texas finds that women tended to wait to seek judicial office until their children were older, a view partly tied to dislike of the public nature of partisan judicial elections. It also may be that compatibility with family responsibilities as a reason for entering the judiciary has different meanings for men and women. For men, the salary or benefits or job security may represent greater financial security for their families, while for women the apparently more regular hours may enable better balancing of family and work obligations.

Location can be an important aspect of entering the judiciary. JAC research (2009) finds that travel is a barrier especially for women (60%) and black and minority ethnic (67%) potential candidates for a judicial position. A much smaller proportion of barristers (38%) identify this as unappealing. In Australia, magistrates may be required to relocate to rural areas, or magistrates and judges may be required to travel on circuit to rural or regional centres. However, location was not especially important to any cohort in Australia except for nearly half (47%) of female judges. The lack of concern among magistrates is somewhat surprising, given the conflicts that have arisen about postings to regional or remote courts (Mack and Roach Anleu 2004).

Career Path

These features include occupational prestige, opportunity for career enhancement, and desire for a change (Table 15). As indicated briefly above, dissatisfaction with previous position was important to very few respondents. A long-standing desire for a judicial role was not important to a majority of respondents and not important to two-thirds of female judges. (Table not given.)

Prestige and opportunity for career enhancement were less important to all respondents. In contrast, Genn (2008) found prestige, in the sense of recognition of achievement, important. Research in Texas found that prestige was more important to attorneys considering a judicial position than to judges themselves (Williams 2009).

In Australia, judges might regard prestige as more important than magistrates, given that judges have higher status. However, the difference in views among men in the Australian judiciary is not significant nor is the difference among magistrates, and there is no significant difference among women or among judges (Table 15).

Table 15. Career Path (Important/Very Important)

	Judges		Magistrates	
	Males (n = 227–229) ⁺	Females (n = 74–76) ⁺	Males (n = 159–160) ⁺	Females (n = 80–81) ⁺
Prestige	26%	25%	16%	26%
Opportunity for career enhancement**	25%	45%	33%	49%
Desire for a change**	57%	47%	68%	74%

Opportunity for career enhancement** $p \leq 0.001$; Chi-square = 20.48

Desire for a change** $p \leq 0.001$; Chi-square = 17.69

⁺The number of respondents is given as a range as not all judges/magistrates who completed the survey responded to all questions.

Source: National Survey of Australian Magistrates 2007, National Survey of Australian Judges 2007.

It may be that respondents do not regard judicial positions as especially prestigious or, even if regarded as prestigious, prestige was not especially important in the decision to enter the judiciary. It is also possible that, as the magistracy has separated from the public service and magistrates have become more professionalised independent judicial officers, its prestige has increased (Roach Anleu and Mack 2008, 2007). Women who have entered the magistracy recently may be entering a judicial role with a different status than male magistrates who were generally appointed some years earlier.

Higher proportions of women, both judges and magistrates, regard going on the bench as career enhancement. It is possible that women's more extensive government or policy work, and perhaps tribunal roles, is regarded as less prestigious than the comparable legal practice experience of their male colleagues, especially the barristers. Perhaps the judiciary, even the lower-status magistracy, represents a position of authority previously denied to women, who regard their judicial roles as a career enhancement. It might be expected that judges, who had held prestigious and very highly paid positions as barristers, would not regard a move to judiciary as enhancement, and this is true to some extent of male judges. There is also a relatively low percentage of male magistrates who regard going to the bench as career enhancement. This may relate to the prestige findings discussed above.

The only career path element important to a majority of most cohorts was *desire for a change*. This was especially important to magistrates in comparison to judges and least important to women judges. The most striking contrast is between female magistrates (74%) and female judges (47%). The varied importance of desire for a change suggests that judges, especially female judges, may need recruitment (perhaps they are waiting for the "tap on the shoulder"). On the other hand, magistrates, especially women, are ready for a change at the point when the opportunity to enter the magistracy presents itself. This suggests that approaches that involve making the oppor-

tunity known generally to women may be important to those who are already in the market for a new career direction.

CONCLUSION

The attitudes women magistrates and women judges express about their decision to undertake a judicial position, and the personal and social characteristics they bring to their work, show a complex picture of gender and court hierarchy. Distinctive experiences, attitudes, and goals of women in the judiciary demonstrate the importance of gender diversity within courts. At the same time, judicial officers in Australia—men, women, judges, magistrates—share important characteristics and views. Most notable are broadly similar personal and social characteristics and experience as a solicitor across several areas of legal practice. These shared features suggest that encouraging recruitment of women—inclusive diversity as described by Erika Rackley (2007)—may not automatically increase “viewpoint” diversity (see also Maveety 2010) as much as proponents hope or critics fear.

Most variations in professional background between women judges and magistrates reflect differences in courts. Women magistrates report more experience with criminal and family law, while women judges report more non-criminal experience and positions as barristers, as do their male colleagues. Emphasising the relevance of particular areas of practice to each level of court may encourage women, traditionally excluded from judicial roles, to be more confident of their ability to succeed in a judicial role.

The specific material context of each level of court appears to lead to different attitudes among women in the judiciary (Sommerlad 2003). A larger proportion of women judges, compared with women magistrates, regard an approach from someone in court or government as important. For women judges, salary or job security are less important reasons to become a judge, compared with women magistrates, but benefits are more important. These views of women judges are shared by male judges, and the different attitudes of women magistrates are shared by their male colleagues. Recruitment of women to a particular level of court should emphasise the most attractive working conditions.

The nature of the work itself and its intellectual challenge were the most important reasons to become a judge or magistrate for all cohorts. Approaches to encourage female candidates should emphasise the attractiveness of intrinsic aspects of judicial work and provide reliable information about the high degree of judicial satisfaction with their work (Roach Anleu and Mack 2009).

In some ways women are a distinct group regardless of court level. Women are younger and report a greater role for their mothers in paid work. They describe more different roles in legal work, especially in public

sector legal practice, in previous judicial/tribunal roles, and in government/research/policy positions. Value to society, hours, and opportunity for career enhancement were more important reasons to become a judge or magistrate for women, compared with males in each level of court. These findings indicate that women magistrates and judges may bring a more varied legal professional experience to their judicial work and may be more likely to see a judicial appointment at any level as a positive move. Valuing this breadth of experience and emphasising a judicial position as career enhancing and valuable to society should be stressed when recruiting women.

In other dimensions, cohorts exhibit particular characteristics or views that reflect complex intersections of judicial hierarchy and gender ordering. Female magistrates are the youngest cohort, appointed in larger proportions in the previous thirteen years. Larger proportions of women magistrates, more than female judges or males at any level of court, report public sector experience, value diversity of work, express a greater desire to improve the court system and for change as reasons to become magistrates. Women magistrates' characteristics and views sometimes contrast most strongly with male judges, who are the oldest, with the longest time in practice before becoming judges, the least public sector experience, and the smallest proportion regarding opportunity for career enhancement as a reason to become judges. Female judges appear distinctive as the smallest proportion expressing a long-standing desire to become a judge and desire for a change, and with the largest proportion reporting previous judicial or tribunal experience. Male magistrates, who are the longest-serving judicial officers as a group, report the least previous judicial or tribunal experience, the least government/policy/research work, and are the cohort least influenced by prestige.

Recruiting more women to the bench requires commitment and many different strategies. Williams (2009) points out, "women are joining the bench for different reasons from men . . . [and] are *prohibited* from joining for different reasons, as well" (174; emphasis in original). Our research goes further and finds that women are entering different levels of court for reasons that are sometimes similar to and sometimes different from women in other courts, as well as sometimes similar to or different from their male colleagues.

A targeted approach reflecting concerns and attractions specific to women and to each court will be more successful than generic recruitment of women to the judiciary. A direct approach to women candidates, especially at the higher levels, is essential. This approach will need to emphasise the features of judicial life and work attractive to all judicial candidates, as well as features specific to each level of court and of particular interest to women. Accurate matching of interests and skills with the opportunities presented by different courts will lead to judicial appointments that are transparent, diverse, and based on merit.

NOTES

1. Further detail about court level and representativeness is shown in the table below:

	Surveys Sent (n = 1017)	Surveys Received (n = 550)
Court Level		
District/County Courts	22%	23%
State/Territory Supreme Courts	19%	20%
Commonwealth Courts	14%	13%
Magistrates Courts	45%	44%

2. See advertisement: *Weekend Australian* (18–19 July 2009). For online advertisement, see http://www.justice.tas.gov.au/justice/news/news_archive/judge_eoi (accessed August 24, 2010).
3. Statistical significance is indicated in each table, two asterisks when the differences are highly significant (< 0.001) and one asterisk when the differences are significant (< 0.005).
4. No minimum time of admission to practice is specified for the New South Wales Local Court.
5. Note, though that a slight change in the breaks of the cohorts suggests a slightly different picture for judges, more consistent with a gradual increase of women over time.

	Judges		
	0–6 years (n = 103)	7–12 years (n = 94)	13+ years (n = 103)
Male	70%	76%	80%
Female	30%	25%	20%

6. An important general quality to the responses to this question is that women magistrates and judges often express the degree of importance they attach to nearly all response choices with greater intensity than men. This overall pattern may somewhat distort a comparison of views about a specific group of features or an individual feature. Women, especially women magistrates, may appear to hold distinctive views in relation to a particular aspect, when this may be part of a wider pattern of greater intensity across many responses to the items in the list.

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APPENDIX: SELECTED SURVEY QUESTIONS

34. Please indicate the types of positions in **legal practice, the legal profession or other legal work** that you have held. (Tick **all** that apply.)

- | | |
|--|---|
| <input type="checkbox"/> Solicitor (public sector) | <input type="checkbox"/> Barrister/counsel (public sector) |
| <input type="checkbox"/> Solicitor (private sector) | <input type="checkbox"/> Barrister/counsel (private sector) |
| <input type="checkbox"/> Government/policy | <input type="checkbox"/> QC/SC/took silk |
| <input type="checkbox"/> Legal associate to a judicial officer | <input type="checkbox"/> Tribunal member |
| <input type="checkbox"/> Clerk/Registrar/Chambers magistrate | <input type="checkbox"/> Law teaching/research (tertiary) |
| <input type="checkbox"/> Magistrate (other than your current position) | <input type="checkbox"/> Other (Please specify)_____ |
-

35. Please indicate the areas of law in which you have worked. (Tick **all** that apply.)

- Criminal defence
- Criminal prosecution
- Family
- Other non-criminal (Please specify major areas)

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39. How important was each of the following factors in your initial **decision to consider** becoming a magistrate?

	Very Important	Important	Somewhat Important	Not Very Important	Not Important	Not Applicable
Newspaper advertisement						
Professional journals						
Family members						
Personnel/management consultant						
Close friends						
Social contacts						
Your personal approach to someone in the court/or the government						
Personal approach to you by someone in the court/or the government						
Professional contacts						
Former clients						
Other (Please specify)						

2. How important was each of the following in your initial **decision to become a magistrate**? Please mark each with a tick .

	Very Important	Important	Somewhat Important	Not Very Important	Not Important
Kind of work					
Job security					
Salary					
Benefits					
Location					
Opportunity for career enhancement					
Intellectual challenge					
Hours					
Diversity of the work					
Long-standing desire to be a magistrate					
Compatibility with family responsibilities					
Occupational prestige					
Desire to improve the court system					
Desire for a change					
Value to society					
Dissatisfaction with previous position					
Other (Please specify)					