

How has the economic downturn affected the legal climate in WA?

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The media and political commentators have been declaring for the past few years that the downturn in the WA mining industry has led to doom and gloom in our economy.

How has the downturn affected the legal climate in WA? Is there more or less legal action, and in what areas of law?

The Big Court Cases

The volume of litigation usually increases in difficult economic times. As more and more people find it hard to pay their debts, there is an increase in legal action to recover them.

Is this a short-term or long-term trend?

The Supreme Court of WA has the jurisdiction to deal with civil matters of a complex nature or where the amount disputed is over \$750,000. The Supreme Court also deals with applications for assorted types of relief, including injunctions.

Civil matter applications to the Supreme Court have fluctuated in the high 2,000s since 2012.

In the 2013 financial year, there were 2,893 applications; in 2014, the figure fell to 2,707.

This decrease coincides with the time that the mining boom began to falter. This suggests that the big end of town were engaging in long drawn-out discussions and deals, rather than immediately seeking resolution in the courts.

Some of these companies would have been:

- seeking extra time to pay;
- undertaking complex “restructuring” or cost-cutting; or
- engaging in slow discussions with wary financiers.

However, all would have been reluctant to enter the legal system to resolve their woes.

Applications in the Supreme Court increased by almost 10% from 2013/14 to 2014/15.

This indicates that any negotiations undertaken behind the scenes in earlier years may have turned

sour, necessitating the use of the court system to deal with disputes.

Larger organisations would have run out of alternatives and needed to head to the Supreme Court to sort out a range of legal problems arising from difficult trading conditions.

There is a time lag between a downturn in the economy and an upturn in litigation, so this increase in litigation is consistent with the economic cycle taking a turn for the worse the couple of years previously. Additionally, we can expect the trend in litigation may continue upwards for a little while yet, to fully reflect the economic climate.

“The long-term trend is that high-end litigation in WA is declining”

But does this mean that Western Australia is becoming a more litigious society, as is sometimes suggested by the media?

Well, the statistics seem to suggest otherwise.

The number of civil applications in the Supreme Court had been steadily increasing prior to the GFC, peaking at 7,316 filings in 2008. However, this figure has decreased since then.

The latest figures from the Supreme Court show that there were just 2,967 filings in the 2015 financial year.

So the long-term trend is that high-end litigation in WA is actually declining.

Perhaps this is the result of a greater awareness of the nature of litigation being protracted and costly and of the existence of alternative dispute resolution techniques which can offer more cost effective solutions that can be tailored to the dispute.

Trends in Statistics

- Civil applications in Supreme Court falling
- Criminal cases in Magistrates Court on the wane, but rising again
- Upward trend in the SAT until last year
- WA companies entering insolvency administration peaked in 2015/16 at 1,013

Family Break-ups

Experienced family lawyers say that they see an increase in family law cases in economic downturns.

The Family Court of WA has jurisdiction over all family law matters in WA. Applications to the Family Court have been trending upwards:

In 2013, there were 2,578
In 2014, there were 2,808
In 2015, there were 2,858
In 2016, there were 3,101

The economic downturn is therefore mirrored in the rise in divorce rates as hard times' impact on families... Sad, but true.

Financial Strife

One clear marker of the start of the economic downturn is the number of debt recovery applications in the District Court of WA.

The District Court is for litigation for claims up to \$750,000. The majority of actions in this court do not relate to big business. They are more likely to involve small to medium-sized enterprises, or ordinary private individuals.

Many debt recovery actions occur in this court.

In the boom year of 2010/11, there were 318 actions. That figure soared to 845 in 2010/11 and reached a seven-year high of 937 in 2013/14.

This represents a three-fold increase in debt recovery actions between 2010/11 and 2013/14.

Luckily, in 2014/15, debt recovery applications fell by 6.4% to 877. We will have to wait for 2015/16 data to become available to determine if this is the start of a much needed decline in debt recovery.

Crime

It is very challenging to try to draw too many links between the economy and crime. So, without assuming such links, let's have a quick look at the trends in crime from the Magistrates Court.

The Magistrates Court has a large criminal jurisdiction, dealing with simple offences and the first stages of indictable offences.

There were 89,263 prosecutions in 2014 and that figure rose to 100,560 in 2015.

This represents an increase of some 12.66%

That figure rose again in 2016, to 103,250 prosecutions.

Criminal prosecutions in that court had been at a high of 118,686 in 2010 but had been steadily falling until the rise in 2015.

It seems odd that there seems to have been more crime during the boom year of 2010 than the bust years of 2014 to 2016. However, there may not be a causative link so we suggest that sociologists, criminologists and policymakers are better placed to comment on this arena.



The State Administrative Tribunal

The State Administrative Tribunal (SAT) is the forum in which administrative decisions (e.g. decisions of local government or other planning authority) can be challenged.

Applications to the SAT have been on a steady rise since its inception in 2004, peaking at 8,379 in 2015.

This represents an increasing familiarity by various stakeholders, including property developers and the construction industry, with this tribunal.

Surprisingly, the SAT experienced its first-ever fall in applications in 2016, dropping by 3.37% from the previous year, to 8,097.

This could well have been linked to the fall in property development activity, which coincided with the downturn in the mining sector. Fewer planning applications result in fewer approvals and rejections and therefore fewer challenges in the SAT.

The economic downturn had a dramatic impact on the construction industry. The number of Building Commission adjudications in the SAT had fluctuated at around 200 in recent years and fell to 175 in 2013. However, they then rose by a massive 34.29% to 235 in 2014.

Developers would have been under financial pressure. They would have been more stringent with their contractors, looking for reasons to reduce costs or delay completion, when faced with falling sales and tighter lending restrictions.

Some Conclusions

The cold hard facts suggest that the economic downturn in Western Australia has indeed had a significant impact on the community in the legal arena. It is an expensive exercise to engage with the court system. Furthermore, as only a small proportion of all disputes end up going to court, the actual wider impact is probably much greater than the statistics show.

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