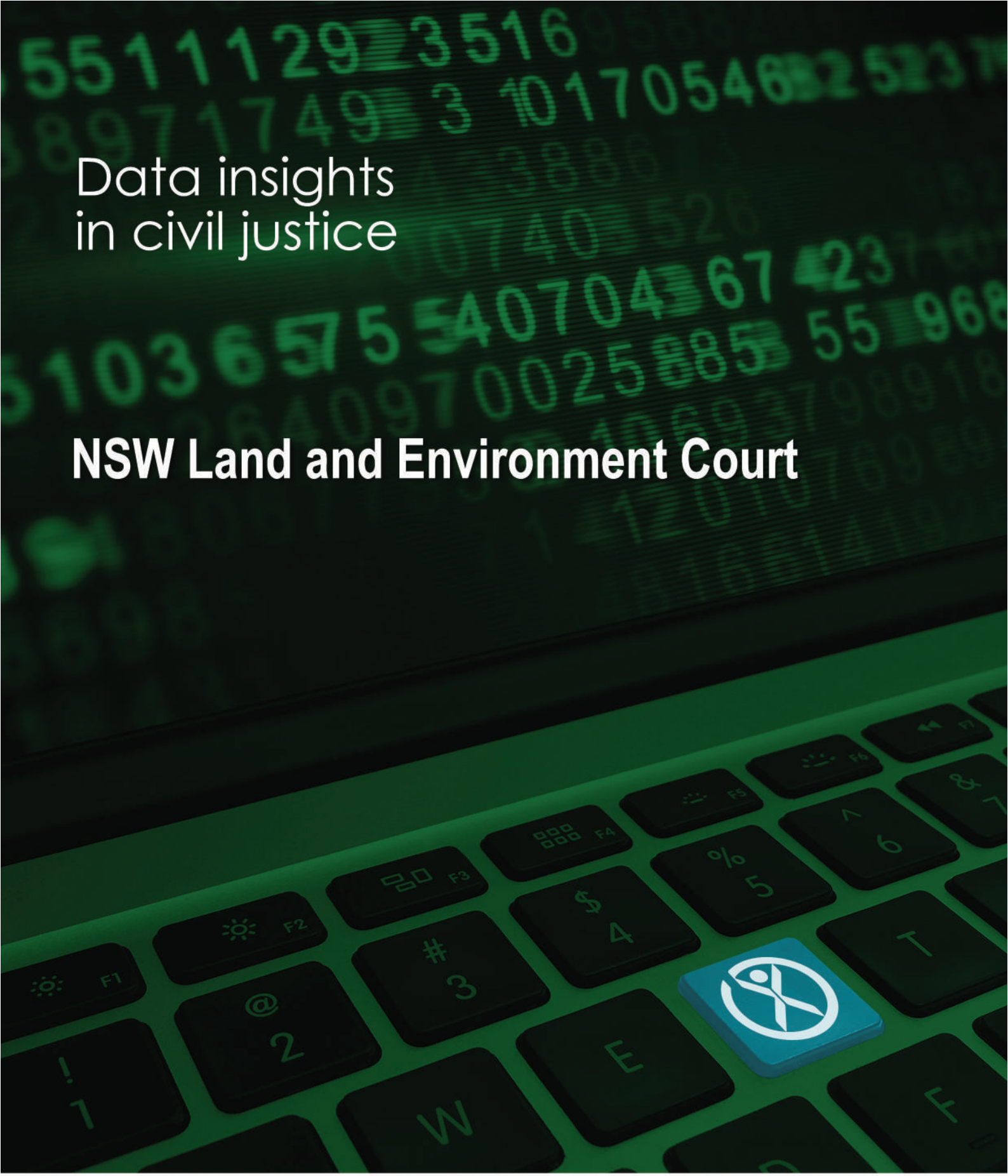
Data insights in civil justice

NSW Land and Environment Court



LAW AND JUSTICE FOUNDATION OF NEW SOUTH WALES

Data insights in civil justice:

NSW Land and Environment Court

Catriona Mirrlees-Black and Sarah Randell

With assistance from Emily Hinton, Bel Rawson and Campbell Burns-McRuvie

Law and Justice Foundation of New South Wales

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LAW AND JUSTICE FOUNDATION OF NEW SOUTH WALES

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Shortened forms

ABN	Australian Business Number
ACN	Australian Company Number
Foundation	Law and Justice Foundation of New South Wales
LEC	Land and Environment Court of New South Wales
LJF	Law and Justice Foundation of New South Wales
NCAT	New South Wales Civil and Administrative Tribunal
NSW	New South Wales

Executive summary

Overview

The Department of Justice NSW uses information about the cases and clients of the civil divisions of the Local, District, Land and Environment, and Supreme Courts, and the NSW Civil and Administrative Tribunal (NCAT), to inform decision-making and policy reform. The Law and Justice Foundation of NSW (the Foundation) was engaged by the Department to investigate the quality and utility of each NSW court and tribunal's administrative data and thus the extent to which it can inform this process.[1] This report focuses on Land and Environment Court data. The focus of each report is the quality and utility of the court or tribunal's administrative data and the value of this in understanding the work of each court. The reports are not intended to provide a comprehensive description of the work of each court or tribunal. For this we recommend the relevant annual report.

The role of the Land and Environment Court

The Land and Environment Court of NSW (LEC) is the first specialist environmental superior court in the world, having an appellate and review jurisdiction in relation to planning, building, environmental, land valuation, mining and other land related matters.[2] The LEC also has a summary and appellate criminal jurisdiction in relation to environmental offences. Unlike some other courts and tribunals, the right to bring a claim and the jurisdiction of the LEC, is generally not dependent on the monetary value of the claim. This report relates only to the LEC's civil jurisdiction.

The judges of the LEC have the same status as judges of the Supreme Court. Judges preside over all land tenure and compensation, civil enforcement, judicial review and all criminal matters. However, for most matters relating to planning, trees and land valuation, suitably qualified commissioners can adjudicate, conciliate or mediate the claim. For instance, commissioners may have qualifications and experience in town planning, environmental science, or land valuation.

The Court Registrar has the overall administrative responsibility for the LEC and can also exercise quasi-judicial powers such as conducting directions hearings and mediations.

[1] The other reports in the series are:

Forell, S & Mirrlees-Black, C 2016*, Data insights in civil justice: NSW Civil and Administrative Tribunal Overview (NCAT Part 1)*, Law and Justice Foundation of NSW, Sydney.

Forell, S & Mirrlees-Black, C 2016, *Data insights in civil justice: NSW Local Court*, Law and Justice Foundation of NSW, Sydney.

Mirrlees-Black, C, Forell, S & Randell, SA 2017, *Data insights in civil justice: NSW District Court*, Law and Justice Foundation of NSW, Sydney.

Forell, S, Coumarelos, C & Wilson, A (forthcoming), *Data insights in civil justice: NSW Supreme Court*, Law and Justice Foundation of NSW, Sydney.

[2] Land and Environment Court of NSW Annual Review 2016.

The value of data on civil justice

Reliable information on who is using the courts and tribunals and for what purpose is essential in planning an affordable, responsive civil justice system to resolve everyday problems.

Information on the extent to which parties are legally represented is also relevant to designing user-appropriate procedures and may also provide evidence of the impact of self-representation on outcomes, case length and court activity.

Information about how long cases take to resolve and their outcomes may be of value to potential applicants and respondents in making informed decisions regarding the bringing and defending of cases.

Land and Environment Court data system

Since May 2016, information about LEC matters has been held on JusticeLink, the same management information system that is used by the Local, District and Supreme Courts. Only information relating to live cases was transferred to JusticeLink and some information was transferred as a static record rather than entered as new fields – such as that relating to previous listings or previous legal representatives – as this information was no longer required in an interactive format. The data that supports the JusticeLink system is held as unit records (such as by proceeding number or entity identifier) in a large number of data tables. The data analysed for this report is taken directly from these data tables by court staff and provided to the Foundation in Excel format.

Method

This research explores the quality and utility of court administrative data *for policy purposes* by seeking to answer a consistent set of questions posed by the Department of Justice NSW. We report on any issues we encountered with the accuracy, completeness and value of the data when attempting to answer each of these questions.

Each court and tribunal differs in the type and complexity of cases it covers and how relevant each of the questions is in that context. Nevertheless, these reports aim to take, as far as possible, a consistent approach to the review of each court and tribunal's data. For consistency across the reports, at times this will mean using language that is not the terminology of the court itself.

Three datasets formed the basis for this work:

- Data held on JusticeLink for *all* LEC civil cases finalised for the first time between June and December 2016. This provides six months of cases.
- Data on all applicants and respondents to these cases coded into their respective entity types by the Foundation.
- Data from a total of 121 paper casefiles and/or electronic entries on the JusticeLink management information system. These were reviewed in the court registry offices.

The methodology was developed by the Law and Justice Foundation of NSW. The views and conclusions expressed in this report are those of the Foundation and not necessarily those of the Land and Environment Court of NSW.

Land and Environment Court data quality

Our review of casefiles and JusticeLink data indicates the transfer from the previous management information system was completed to a high standard. However, as not all information was transferred in a format that could be extracted from JusticeLink the data does not currently provide a full picture of certain features of cases. This includes listings that occurred and notices lodged prior to the transfer, as well as details of legal representatives that were no longer involved in the case at the time of transfer. Our assessment of data quality, in respect of each the questions posed by the Department is provided in Table 1.

Table 1: LJF assessment of LEC data quality, summary

Data item	LJF assessment of data quality	Comment
Matter / case count	Very good	It is straightforward to identify the number of LEC cases. Each one has a substantive proceeding and any associated notices of motion as separate proceedings.
Claim type	Very good	Each case is categorised by legislation and then grouped into lists. The quality of this categorisation appears to be very high, as for the most part it is completed by registry staff. However, this should be kept under review as the number of applicants e-filing and identifying the claim type themselves, which is currently low, is likely to increase.
Monetary value	Not captured	The value of monetary claims is not specifically captured on JusticeLink as it is not directly relevant to most LEC cases, other than compensation claims. There is the capability to record the value of the land, development or building to which the claim relates where this affects the court fees payable, but our review of casefiles indicated that completion of this field was variable.
Entity type	Good but limited	The information that the LEC collects about parties is fairly limited, but applicants and respondents were virtually all correctly classified as individuals or organisations and it is also possible to determine how many applicants and respondents participated in each case. Although JusticeLink collects sufficient detail for the type of organisation to be identified and for some types of claim the organisation is determined by legislation, a further coding exercise is required to classify these for the purposes of analysis. This detail of information could be captured with better recording of ABN/ACN (facilitated by greater use of frequent user IDs) or alternatively requiring applicants to categorise the parties from a small set of organisation codes. It could also be useful to separately capture the role of applicants for some classes of action.
Defending actions/ attendance of the parties	Unclear	Although in practice most LEC claims will require the respondent to actively respond there is no one source of information to indicate the extent of this involvement. For some types of case, the respondent is required to file a Statement of facts and contentions. Notices of appearance are another indication that the respondent wishes to participate in the proceedings. A complete review of the usefulness of this information was limited by not all notices being transferred into JusticeLink data fields. This is a temporary issue.

Data item	LJF assessment of data quality	Comment
Representation	Good	Details of representatives are well recorded on JusticeLink. There is a slight under-count, for instance where cases complete before representative details are entered and due to some representatives' details not being transferred onto JusticeLink. The latter is a temporary issue.
Events / claim progress	Good	It is feasible to track the progress of cases from listing or order data. Information on listings could be amended to facilitate analysis by separating the various elements of an event (e.g. type of event, location, who leading, about what). It was not possible to fully assess the data quality of events and orders as, understandably, not all historical information about cases was transferred to JusticeLink in a way that enabled data extraction. This is a temporary issue, as for cases that commenced after the transfer, the quality of information is good.
Outcomes	Good	Most cases have an order recorded that is of a final order type. Of those that do not, most were either closed administratively or had been deleted (for amendment) but not updated on the system. As in other courts, civil case outcomes can be complex involving multiple orders, orders that refer final decisions to other bodies, and orders that only partially achieve what was sought. Additional flexibility may be required in JusticeLink to adequately capture this. However, relative to other courts, the outcome of cases was very well recorded and informative. To complement administrative data on outcomes, research to explore client's experience and satisfaction with outcomes is recommended.
Time claims take	Moderate	As most cases have either a final order type, or a Notice of discontinuance filed, it is feasible, though not straightforward, to calculate the time to this event. An alternative is to use the time between the JusticeLink dates for case lodged and case finalised. However, the latter currently appears to use the date an order was entered into JusticeLink rather than the date it was made. This should be amended to align with other courts. Estimates of case length are currently affected by the inclusion of cases that first finalised prior to 2016 but were reopened for some reason, such as making administrative corrections to the original order. This is probably a temporary consequence of the move to JusticeLink.

Key questions

Our assessment of data quality indicates that it was usually sufficient to provide some findings in respect of each of the questions posed. Key findings are summarised below.

1. What types of civil claims are litigated in the Land and Environment Court?

Nearly two-thirds (63.0%) of the claims in the six months of data we analysed were appeals of planning related matters. The majority of these were in respect of a non-residential property, which includes multi-unit and other large developments (42.1% of all claims), rather than residential (single unit dwelling) property (10.9%).

The LEC also deals at first instance with tree disputes between neighbours regarding trees and hedges: 8.1% of the claims in the six months of data were of this type.

The other main claim types were: *Planning – enforcement* (7.4%); property related *Compensation claims* (6.5%); *Valuation objection* (4.3%); *Judicial review* (4.9%); and

Internal appeals (1.0%). The remaining 4.8% of claims included Aboriginal land claims and mining related matters.

2. What is the monetary value of Land and Environment Court claims?

Although some LEC claims are monetary claims, such as those in relation to the amount of compensation following compulsory acquisition of a property or land or for damage caused by trees, most are not directly about money. Nevertheless, the value of the land, development or building to which the claim relates can be a relevant factor in determining the fee that the court charges. However, this information is not currently systematically captured.

3. What do we know about the parties in Land and Environment Court claims?

Most LEC claims involve one applicant (85.7%) and one respondent (85.0%). About a half (51.6%) of applicants are recorded as private individuals compared to a fifth (20.2%) of respondents. Private individuals are most often involved in *Tree disputes*, as both applicants and respondents, and as applicants in *Planning – residential* claims. Organisations are the main applicant type for *Valuation objection* claims and *Planning – enforcement* actions, and are the main respondent in all types of claim other than *Tree disputes* and *Planning – enforcement*.

Applicant and respondent address details can be used to identify the place of dispute for *Tree disputes*, though additional data collection would be required to locate other types of claim.

4. What types of organisations are involved in Land and Environment Court claims?

Our manual classification of organisations into different types by reference to their title and, where available, their trading name, indicated that of applicants:

- 34.2% were businesses, with property developers / construction companies making up most of the business applicants (equating to 17.3% of all applicants)
- 5.6% were local councils.

Of respondents:

- 56.8% were local councils
- 9.0% were NSW Government, and
- 6.6% were businesses.

The most common actions involved: [3]

- business against local council (33.7%)
- individual against local council (32.0%)

[3] Where there was more than one applicant or respondent this analysis selected one party from, in decreasing order of priority: local council, state government, statutory authority, business, other organisations, individual.

- individual against individual (8.4%)
- local council against individual (3.5%)
- individual against NSW Government (3.3%).

5. Do respondents defend claims in the Land and Environment Court?

For most types of LEC cases, there is a procedural requirement that respondents – who are most commonly a local or state government or other public body – actively participate. However, different types of case require different responses and so there is no one simple way to assess the extent to which respondents are actively engaged. For instance, in planning appeal cases, respondents (usually councils) are generally required to file a Statement of facts and contentions which provides details of the case and outlines issues for determination by the LEC. Another indication of respondent engagement is if a Notice of appearance is filed, which is required when the respondent is legally represented. The analysis indicated that, for cases commenced prior to the transfer to JusticeLink, information on these documents had not been entered into the relevant data fields. This will be a temporary limitation for the use of this data.

6. Who is represented in the Land and Environment Court and for what claims?

Overall, at least 88.3% of applicants and 82.4% of respondents had a representative at some point during their case.[4] For most claim types the proportion of applicants represented is roughly in line with the proportion of respondents. Rates of representation are highest for *Planning* and *Compensation claims* and lowest for *Tree disputes*. For the latter less than a third (29.5%) of applicants had representation, and about a third (33.7%) of respondents. Government bodies and businesses were more likely to be represented as applicants or respondents than private individuals.

7. How do claims progress in the Land and Environment Court?

Listing events are well captured in the LEC, although the event descriptions combine different aspects of the event such as the type of event, where it occurred, and what it was about. Our analysis and detailed review of *Tree disputes* indicates that the data is reliable and can provide an insight into case progress. However, this data is temporarily affected by the transfer to JusticeLink, whereby details of some listings occurring prior to June 2016 are not held in a way that they could be extracted for data analysis.

Data on orders made by the court provides an alternative measure. Although progression is less straightforward to determine due to the use of multiple orders, the data provides an indication of the relative amount of activity on a case. For instance, the average number of orders was lowest for *Valuation objection* claims (2.4) and *Tree disputes* (3.4). *Planning – not residential* (7.5) and *Judicial review* (9.2) had the highest average number – explained by a relatively high average number of adjournments.

[4] We found some evidence of a slight under-recording of representation.

8. How are Land and Environment Court claims finalised?

There is no one data field that indicates how cases finalise. This needs to be constructed from the finalising status of a case (determined or not), by identifying final orders within order data, and, where these are not apparent, utilising data on discontinuance notices to identify cases discontinuing prior to final orders. LEC data on final orders is relatively good, in that it is possible to identify an outcome for virtually all cases, and the description of final orders is informative.

Outcomes vary by claim type but overall, 13.9% of LEC claims were allowed/upheld/granted and a further 30.1% were recorded as reaching agreement to allow. In total 38.9% of LEC claims finalised by way of some type of agreement/consent – although 1.4% were an agreement to dismiss. Another 13.2% were dismissed following a contested hearing. The remaining 27.6% were discontinued, though in some cases these may have involved an external settlement that the LEC was not informed of.

9. How long do Land and Environment Court claims take to finalise?

The average time from lodgment to the first date that a final order is made or the case discontinues is 193 days (28 weeks). *Tree disputes* are the quickest to reach a first outcome, taking 103 days (15 weeks) on average, closely followed by *Planning – residential* claims at 110 days (16 weeks). Longest are *Miscellaneous* claims at 328 days (47 weeks) and *Compensation claims* at 315 days (45 weeks). Many factors will influence the length of a case, and these are not necessarily in the control of the court. However, data of this type could provide a baseline against which to assess case management reforms.

Introduction

The Department of Justice NSW is seeking to optimise the use of civil court and tribunal data for evidence-based decision-making, specifically data from the civil divisions of the Local, District, Land and Environment, and Supreme Courts, and the NSW Civil and Administrative Tribunal (NCAT). In support of this, the Law and Justice Foundation of NSW (the Foundation) was engaged by the Department to investigate the quality and utility of each court and tribunal's data in informing policy and practice. This report focuses on data from the civil jurisdiction of the Land and Environment Court of NSW. It is not intended to provide a comprehensive description of the work and procedures of the Land and Environment Court. For these, we commend the Land and Environment Court's Annual Reviews[5] and Practice Notes[6].

Land and Environment Court of NSW

The Land and Environment Court of NSW (LEC) is the first specialist environmental superior court in the world, having an appellate and review jurisdiction in relation to planning, building, environmental, land valuation, mining and other land related matters.[7] Appendix 3 provides examples of the steps selected case types go through, prior to lodgment at the LEC.

Its status is equivalent to that of the Supreme Court (Figure 1). The LEC also has a summary and appellate criminal jurisdiction in relation to environmental offences. This report only relates to the LEC's civil jurisdiction.

The judges of the LEC have the same status as judges of the Supreme Court. Judges preside over all land tenure and compensation, civil enforcement, judicial review and all criminal matters. However, for most matters relating to planning, trees and land valuation, suitably qualified commissioners can adjudicate, conciliate or mediate the case. For instance, commissioners may have qualifications and experience in town planning, environmental science, or land valuation.

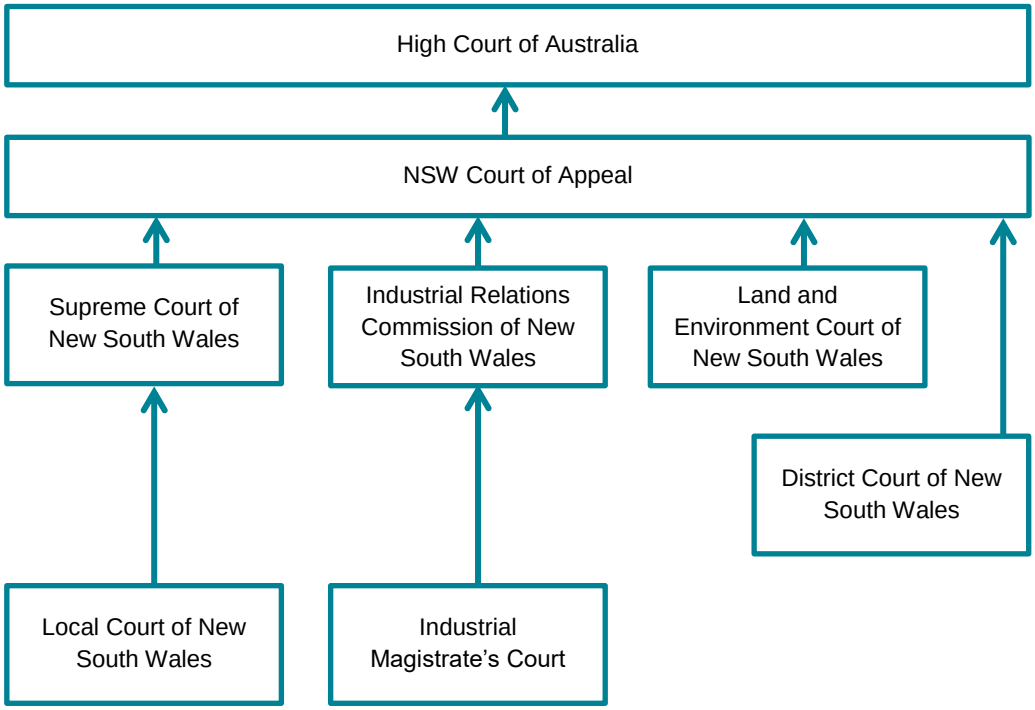
The Court Registrar has the overall administrative responsibility for the LEC and can also exercise quasi-judicial powers such as conducting directions hearings and mediations.

[5] http://www.lec.justice.nsw.gov.au/Pages/publications/annual_reviews.aspx

[6] http://www.lec.justice.nsw.gov.au/Pages/practice_procedure/practice_notes.aspx

[7] Land and Environment Court of NSW Annual Review 2015.

Figure 1: New South Wales Court System – Civil Jurisdiction



Source: Land and Environment Court of NSW Annual Review 2015.

Background

Data published in annual reports and reviews indicate that the LEC deals with less than 1% of all civil law matters finalised by courts and tribunals in NSW.[8] As indicated in Table 2, the bulk of civil law matters appear to be heard in the NSW Local Court and the NSW Civil and Administrative Tribunal (NCAT) (49.6% and 41.7% of all matters respectively). However, as noted in earlier reports in this series the size, complexity and *definition* of matters in each jurisdiction vary. [9]

[8] The number of matters lodged or finalised is a key metric by which the work of civil courts and tribunals are measured and compared. This is what is reported in annual reports and in the Productivity Commission's Report on Government Services (ROGS).

[9] Forell S & Mirrlees-Black C 2016, *Data insights in civil justice: NSW Civil and Administrative Tribunal Overview (NCAT Part 1)*, Law and Justice Foundation of NSW, Sydney, p. 22, see also other *Data insights in civil justice* reports at http://www.lawfoundation.net.au/reports/datainsights

Table 2: Annual report finalisations for civil matters, by jurisdiction in NSW, 2016

NSW civil jurisdictions	Finalisations	
	N	%
NCAT (2016-2017)	66,897	41.7
Local Court (2016)	79,470	49.6
District Court (2016)	4,973	3.1
Supreme Court+ (2016)	7,580	4.7
Land and Environment Court finalisations (2016)	1,340*	0.8
Estimated total	**160,260***	**100.0**

Sources: NCAT Annual Report, 2016–2017; Local Court of NSW Annual Review 2016; District Court of NSW Annual Review 2016; Supreme Court of NSW Provisional Statistical Data as at January 2017, pp. 4–6, including common law – civil and equity disposals; Land and Environment Court of NSW Annual Review 2016.
Notes: + Common law civil and equity divisions.
* This number includes a small, but unknown number of criminal cases from LEC; 1,099 are civil cases from LEC classes 1, 2 and 3 only.
The figures differ from the number of cases reported in the Foundation reports due to differences in timeframe and potentially, in the way that finalised matters are selected for reporting.

Scope of the task

As part of a broader review of civil court and tribunal data, the Foundation was commissioned by Department of Justice NSW to:

1. assess the content and quality (reliability, validity) of LEC civil jurisdiction data, as evidence for the purpose of policy making, and
2. suggest any changes to data definition, collection, entry, analysis and/or retrieval that would improve the quality and utility of the data for this purpose.

This research explores the quality and utility of court administrative data for *policy purposes* by seeking to answer a consistent set of questions agreed with the Department of Justice NSW. We report on any issues we encountered with the accuracy, completeness and value of the data when attempting to answer each of these questions.

Each court and tribunal differs in the type and complexity of cases it covers and how relevant each of the questions is in that context. Nevertheless, these reports aim to take, as far as possible, a consistent approach to the review of each court and tribunal's data. At times this will also mean using language, for consistency across the reports, that is not the terminology of the court itself.

Key questions addressed

This report outlines preliminary insights into the content and quality of the Land and Environment Court of NSW civil jurisdiction data. It is framed around the following key questions:

1. What types of civil claims are litigated?
2. What is the monetary value of claims?
3. What do we know about the parties in claims?
4. What types of organisations are involved in claims?
5. Do respondents defend claims?
6. Who is represented and for what claims?
7. How do claims progress?
8. How are claims finalised?
9. How long do claims take to finalise?

In each case we provide a snapshot of data analysed, and raise key issues that impact upon the reliability and validity of that data.

An overview of the methodology

The Foundation drew data and information from the following sources:

1. data held on JusticeLink for *all* LEC civil cases finalised for the first time in the six months between June and December 2016, including information on claim types, applicants and respondents, representation status, court processes, outcomes and all relevant dates
2. details of applicants and respondents, for coding into their respective entity types
3. 121 selected casefiles held by the LEC registries, to verify the accuracy of JusticeLink data, and to identify what information was not available on JusticeLink
4. relevant documents, including legislation, court rules and regulations, JusticeLink user guides and instructions for e-filing
5. court and JusticeLink staff.

The methodology was developed by the Law and Justice Foundation of NSW. The views and conclusions expressed in this report are those of the Foundation and not necessarily those of the LEC. Details of the methodology are provided in Appendix 1.

Factors affecting data quality

The utility of JusticeLink data from any of the courts to answer policy questions and to accurately inform decision-making varies depending on the questions being asked and the nature of the data that is required to answer them. Importantly, the reliability of different data points may be compromised in a number of discrete ways:

- the scope of information collected (e.g. on applicant and respondent type)
- how data or information is defined (e.g. the extent to which definitions of claim types are technical, ambiguous or overlap)
- how data is entered onto JusticeLink (e.g. whether data is being entered by a large number of different parties and their representatives through e-filing and bulk filing or by a small and experienced registry team)
- the availability of a data dictionary that clearly defines the fields in JusticeLink and how each option should be interpreted
- how data is stored and retrieved
- the sheer amount and complexity of the data held and how the data systems have been built, documented and maintained over time to accommodate this complexity
- how data is analysed, cleaned and reported
- variation, where relevant, between jurisdictions (or divisions or registries) in each or any of the above.

The involvement (at a single point in time and over time) of a diverse range of players (including external contractors responsible for designing and/or maintaining the system) – and any differences in how they may understand the information – also adds to the complexity.

The data reported in this report

The LEC transferred to JusticeLink on 23 May 2016. This transfer has implications for the data reported here.

Firstly, we can only report on cases recorded as finalised for the first time in the LEC in the **six months between June and December 2016** as most cases finalised prior to this were not transferred to JusticeLink. The annual rate should not be extrapolated from the numbers provided in this report, partly due to any underlying seasonality or trends, but also as it is possible that the extract over-counts cases first finalised in the six-month period. This is because it may include cases that first determined and reopened prior to June 2016. If this occurred, the first determined date subsequently captured on JusticeLink (and used for our data extract) is later than the first outcome event.

Secondly, for cases that had commenced prior to the transfer, not all information was transferred into JusticeLink in a way that would allow it to be extracted for analytical purposes. For instance, it would appear that some notices and listing events have been transferred as pdf documents rather than being entered in such a way that they were stored in JusticeLink data fields. It is not possible to quantify the impact of this, but we highlight where this may have compromised findings. The impact of this on analysis will diminish over time.

1. What types of civil claims are litigated in the Land and Environment Court?

DATA QUALITY – VERY GOOD
It is straightforward to identify the number of LEC cases. Each one has a substantive proceeding and any associated Notice of motion as separate proceedings. Each case is categorised by the legislation and then grouped into lists. The quality of this categorisation appears to be very high as for the most part it is completed by registry staff. However, this should be kept under review as the number of applicants e-filing and identifying the claim type themselves, which is currently low, is likely to increase.

The business of each civil court or tribunal is defined in large part by the types of matters that it deals with. The number of matters lodged or finalised is often used as a measure of activity, although in practice the amount of work relating to each case can vary considerably. Having a reliable picture of the types of claims being brought to the civil justice system and how they are changing over time can assist decisions regarding the appropriate resourcing of courts, particularly in a specialist court such as the LEC.

Measuring claims

LEC cases are made up of substantive proceedings – which include applications, summons, and claims – and secondary proceedings. Most of the latter are Notices of motion which are interim applications to LEC requesting decisions that are related to the matter but do not (usually) conclude the case.[10] Thus, as in the lower courts, one case can have multiple proceedings. For consistency with our other court and tribunal reports, the substantive proceeding will be referred to here as the claim, noting that in practice the correct terminology for how a case commences varies by case type (see Table A1, Appendix 2 and Appendix 4).

For the analysis reported here we have selected civil cases that were recorded as finalised for the first time in the six-month period between June and December 2016. These dates were selected because the LEC transferred outstanding cases and recorded new cases on JusticeLink from 23 May 2016. Internal appeals on matters of law are included as separate cases. Criminal cases are excluded.

[10] Only a Notice of motion that requires a hearing in court will create an additional proceeding. Others will be described as a chamber outcome in the orders data against the claim proceeding.

The figures reported here, unless otherwise indicated, are on the basis of the originating proceeding only. They may differ from those reported elsewhere due to different case selection criteria.

Claims that fall within the jurisdiction of the LEC are determined by legislation, currently the *Land and Environment Court Act 1979*. This dictates to which class the claim is allocated (similar to a list in the Local or District Courts). The specific legislation to which the claim relates is captured in JusticeLink and provides useful information on the nature of the claim (Table A2, Appendix 2). Examples of some claim types are provided in Box 1.

Box 1: Claim type examples

Planning/development: a person who is dissatisfied with the decision of a planning authority (usually a council) can lodge an appeal of that decision with the LEC. The LEC undertakes a review of the merits of the original decision.

Compensation claims: if a person whose land has been compulsorily acquired is dissatisfied with the amount of compensation offered to them, they may lodge an objection with the LEC. The LEC then decides the just compensation amount for the land acquisition.[11]

Valuation objection: a person may object to a land valuation (for the purposes of land tax and rates) to the Valuer General. If the person is dissatisfied with the determination of the objection by the Valuer General they may appeal to the LEC.[12]

Judicial review: in these claims, the LEC reviews administrative decisions and actions of both local and state government under planning, environmental or mining laws. The LEC reviews the validity of the decision or action (e.g. whether the decision-maker had power under the relevant statute to make the decision or take the action, followed the proper process and exercised the power in accordance with the law).[13]

As for other courts, the types of cases that the LEC deals with vary considerably in their complexity, and the court responds to this by having different procedures in place for different case types (or classes). For the purpose of reporting we have had to combine some classes to provide a large enough base of claims to report on. We have also used our own terminology to describe the types of case included in each category. Our groupings, and how these map onto the LEC classes is shown in Table 3. For example, we have split class 1 into three categories: *Planning – not residential,* which includes large residential developments such as units and mixed use, and other developments; *Planning – residential* is restricted to small single dwelling residential matters; and *Planning – other* includes miscellaneous appeals. At times, all cases have been combined to give an overall picture for the court, but it should be noted that these findings will be affected by the mix of cases at any point in time.

[11] http://www.lec.justice.nsw.gov.au/Pages/your_legal_problem/compulsory_acquisition.aspx

[12] http://www.lec.justice.nsw.gov.au/Pages/your_legal_problem/land_valuation.aspx

[13] http://www.lec.justice.nsw.gov.au/Pages/your_legal_problem/government_decisions.aspx

Quality of claim data

For claims lodged at the registry, staff enter the details of the claim onto JusticeLink. Staff first select the lodgment document type (civil summons, class 1, 2, 3 applications, Statement of claim etc.); assign cases to the appropriate class (similar to a list in other courts); and then select the nature of the claim (usually the relevant section of the statute) from a drop-down menu.

Various checks were made of the information in casefiles against that recorded on JusticeLink and these indicated that the count of cases and allocation to claim type is of a high quality. Examples of apparent duplicate proceedings were checked and were found to be valid. For instance, a claim was separated into three claims on the direction of the registrar as it related to three different valuations. A comparison was also made of the stated claim type on the original application with the claim type recorded on JusticeLink.

An issue in our analysis of other courts has been whether the type of claim is correctly captured in JusticeLink data. To assess this, we compared the details of the claim as recorded in the paper casefile to the class type recorded on JusticeLink. As all claim types are pre-specified on JusticeLink as class types there is no opportunity for non-existent claim types to appear in the data. In theory there is still room for claims to be incorrectly assigned to a list/class or claim type when recorded on JusticeLink, but in our review of casefiles we did not identify any instances of this.[14] Some aspects of a claim which determine its classification are not easily discernible from the description of the matter, such as whether the case relates to a residential (restricted to small single residential matters) or non-residential (includes large residential developments and other developments) property. However, as this has an impact on the how the case is managed and the fee payable (non-residential matters generally appearing to attract the corporate fee) that will no doubt have a bearing on the accuracy of how it is recorded in JusticeLink.

Types of claim

Nearly two-thirds (63.0%) of the claims in the six months of data we analysed were appeals of planning related matters (Table 3). The majority of these were in respect of a non-residential property, which includes multi-unit and other large developments (42.1% of all claims), rather than a residential (single unit dwelling) property (10.9%).

The court also deals at first instance with *Tree disputes* between neighbours regarding trees and hedges: 8.1% of the claims in the six months of data were of this type.

The other main claim types were: *Planning – enforcement* (7.4%); property related *Compensation claims* (6.5%); *Valuation objection* (4.3%); *Judicial review* (4.9%); and *Internal appeals* (1.0%). The remaining 4.8% of claims included Aboriginal land claims and mining related matters.

[14] However, we acknowledge that we do not have the specialist legal expertise in land and environment law that may be required to identify any such instances.

Table 3: LJF groupings of LEC classes for claims first finalised June to December 2016

LJF claim type	LEC class	No. of claims June-Dec 2016	%
Planning – not residential#	Class 1 – Development appeal	363	42.1
Planning – residential*	Class 1 – Residential development appeal	94	10.9
Planning – other	Class 1 – Miscellaneous appeal	86	10.0
Planning – enforcement	Class 4 – Civil enforcement	64	7.4
Tree disputes	Class 2 – Tree dispute application	70	8.1
Compensation claims	Class 3 – Compensation claim	56	6.5
Valuation objection	Class 3 – Valuation objection	37	4.3
Judicial review	Class 4 – Judicial review	42	4.9
Miscellaneous	Class 2 – Miscellaneous appeal Class 3 – Aboriginal land claim Class 3 – Miscellaneous appeal Class 4 – Transfer Class 8 – Mining Class 8 – Mining – small scale title	41	4.8
Internal appeal	Class 1 – s. 56a appeal Class 2 – s. 56a appeal	9	1.0
All		**862**	**100.0**

Source: LEC JusticeLink data on claim proceedings for cases recorded as first finalised June–December 2016.
Notes: # Includes large residential developments such as units and mixed use, and other developments.
* Restricted to small single residential dwelling matters.

The impact of e-filing

Following the LEC's move to JusticeLink, LEC parties can utilise the NSW Online Registry to file documents. Of those 294 claims lodged and finalised for the first time between June and December 2016, just 24 (7.8%) had utilised JusticeLink e-filing. This proportion will no doubt increase in the future but for now is too small to investigate whether this will have an impact on data quality.

Technology is also being utilised by the court in case management via the LEC's Online Court (previously the LEC's eCourt). Online Court documents are bar-coded so can be separately identified once added to the paper casefile.

2. What is the monetary value of Land and Environment Court claims?

DATA QUALITY – NOT CAPTURED
The value of monetary claims is not specifically captured on JusticeLink as it is not directly relevant to most LEC cases, other than compensation claims. There is the capability to record the value of the land, development or building to which the claim relates where this affects the court fees payable, but completion of this field was variable.

The value of claims is used in other parts of the NSW court and tribunal system to allocate claims to different jurisdictions, or lists within jurisdictions. The business of the LEC, however, is determined by the type of claim only, not its monetary value. Nevertheless, the monetary value is relevant information as it can have an impact on the fees that a court charges.

Measuring claim value

Although some LEC claims are effectively monetary claims, such as those in relation to the amount of compensation following compulsory acquisition of a property or land (see Box 2 for an example) or compensation claims for damage caused by trees, most are not directly about money. Nevertheless, the value of the land, development or building to which the claim relates can be a relevant factor in determining the fee that the court charges (Table 4).

However, this information is not requested on the generic class 1, 2, 3 paper application form and although there does appear to be a relevant field for e-filed applications, this data does not appear to be routinely captured in JusticeLink.

Box 2: Example of compensation claim

Class 3 – Compensation Claim: Land Acquisition (Just Terms Compensation) Act – s. 66 Objection to the amount of compensation offered for compulsory acquisition of land

In this claim, the applicant was objecting to the Valuer General's determination of compensation in the amount of $435,900. The applicant was seeking orders that the appeal to the LEC was upheld and that the LEC make new findings in relation to the quantum of compensation (for market value of $1,921,210 and $448,614.41 for loss).

The claim was finalised via a consent order between the parties, where the amount of compensation was determined at $850,000 with the respondent to pay the applicant's costs.

Table 4: LEC lodgment fees current at July 2016

		Standard AUD$	Corporation AUD$
Class 1 Environmental Planning & Assessment Act 1979 (s. 97) related to a development/building application where the value of the development/building is:			
OR			
a Class 3 Land and Environment Court Act 1979 (s. 24) related to a claim for compensation for the compulsory acquisition of land, where the amount offered is:			
(a)	Less than $500,000	917	1,834
(b)	Is $500,000 or more but less than $1,000,000	4,195	5,571
(c)	Is $1,000,000 or more	5,240	6,960
A Class 3 matter regarding an objection to the valuation of land, where the land has been valued by the respondent as:			
(a)	Less than $500,000	322	644
(b)	Is $500,000 or more but less than $1,000,000	507	1,014
(c)	Is $1,000,000 or more	917	1,834
Class 2 Trees (Disputes between neighbours) Act 2006 Class 8 Mining Act 1992, small title claim		239	478
Other Class 1, Class 2 or Class 8 matter Any Class 4 matter		917	1,834
Internal appeal Land and Environment Court Act 1979 (s. 56A)		2,143	4,286

Source: http://www.lec.justice.nsw.gov.au/Pages/forms_fees/fees/feesschedule.aspx (at 25 May 2017).

Improving information about the value of claims

Information about the monetary value of claims can provide an indication of the benefits of bringing a claim relative to the various costs that the parties incur and the cost of providing the court system to determine claims. Although, for most LEC matters the outcome is not directly related to potential monetary gain, for those where it is, such as compensation claims, the capture of this information could be improved. One option is to collect this information routinely by asking applicants to indicate, for statistical purposes only, the approximate value of their claim in broad categories – and including a 'not applicable' option where appropriate – and having an appropriate JusticeLink data field to capture this.

3. What do we know about the parties in Land and Environment Court claims?

DATA QUALITY – GOOD
Although the information that the LEC collects about parties is fairly limited, applicants and respondents were virtually all correctly classified as individuals or organisations. It is also possible to determine how many applicants and respondents participated in each case.

Greater use of frequent user IDs may facilitate improved recording of ABN/ACN numbers that could be used to provide more information about the parties involved in claims.

Information about who is taking action against whom in each civil jurisdiction in NSW is relevant to the design of a client-centred justice system. Given the jurisdiction of the LEC, most cases are brought by parties with an interest in, or in the use of, land or property – such as a land owner, a council, or a property developer. The role of the party may be determined by the case, but there is still some merit in understanding for each court or tribunal the extent to which parties are private individuals, businesses, or some other type of organisation as this may have policy implications for fee revenue, the design of client appropriate court procedures and may also be a relevant factor in understanding how cases progress (see Sections 7 and 9) and, potentially, how they finalise (see Section 8).

In this section we assess the information about parties that is readily available from JusticeLink. In Section 4 we provide the findings of our additional coding and analysis which explores further the types of organisations involved in LEC cases and demonstrates the potential for capturing additional information about the parties to claims.

Measuring party number and type

In the LEC, the party bringing a civil case is called the applicant and the other party is the respondent. There can be multiple parties on both sides. Details are entered by the registry staff onto JusticeLink, or directly by the applicant (or their representative) via e-filing. Information collected includes:

- names (person or business) and trading name where applicable
- Australian Business Number (ABN) and/or Australian Company Number (ACN)
- addresses and postcodes (although some parties only provide details of their representative)

- whether each party is an 'individual' or an 'organisation' and whether each party is allocated to 'corporate' or 'non-corporate' for fee purposes.

This information can be further used to categorise the parties into types of organisations but this currently requires additional coding of the data (see Section 4). Without further coding, JusticeLink can readily provide information on:

- the number of applicants and respondents per claim / case
- whether they are individuals or organisations
- whether they are registered for the corporate or non-corporate fee rate
- whether they have a ABN or ACN recorded
- in which part of the state they or their representative is located.

Number of applicants and respondents

Most LEC claims have only one applicant (85.7%). This was particularly so for *Internal appeals* (100.0%) and *Planning – enforcement* (95.3%). Multiple applicants were most common for *Miscellaneous* claims (31.7%) and *Compensation claims* (30.4%) (Table 5). Most LEC claims have only one respondent (85.0%)

Table 5: Number of applicants and respondents by type of LEC claim

		Applicants			Respondents		
		1	2	3+	1	2	3+
	N	%	%	%	%	%	%
Planning – not residential#	363	94.2	5.5	0.3	97.0	2.5	0.3
Planning – residential*	94	81.9	18.1	0.0	100.0	0.0	0.0
Planning – other	86	70.9	27.9	1.2	97.7	2.3	0.0
Planning – enforcement	64	95.3	4.7	0.0	48.4	26.6	23.4
Tree disputes	70	74.3	25.7	0.0	50.0	42.9	1.4
Compensation claims	56	69.6	25.0	5.4	98.2	0.0	0.0
Valuation objection	37	94.6	5.4	0.0	97.3	0.0	0.0
Judicial review	42	83.3	14.3	2.4	11.9	31.0	57.1
Miscellaneous	41	68.3	24.4	7.3	80.5	12.2	7.3
Internal appeal	9	100.0	0.0	0.0	88.9	11.1	0.0
All	**862**	**85.7**	**13.2**	**1.0**	**85.0**	**8.9**	**5.1**

Source: LEC JusticeLink data on participants in claim proceedings for cases recorded as first finalised June–December 2016.
Notes: Includes all recorded applicants and respondents for claim proceedings (greatest number in each case was 6 per claim). There were 8 claims with no respondent recorded: 4 of these were *Tree disputes*. Percentages in the table do not add to 100.0% as claims with no respondent are included in the denominator.
Includes large residential developments such as units and mixed use, and other developments.
* Restricted to small single residential dwelling matters.

Multiple respondents were most common in *Judicial review* (88.1%) and *Planning – enforcement* (50.0%) matters. An example of a judicial review case with multiple respondents is provided in Box 3.

Box 3: Case study on multiple respondents

Claim type – Judicial review

This case concerned a proposed casino and resort that had been approved by the Planning Assessment Commission (PAC) for development in the area known as Barangaroo on the Sydney Harbour foreshore.

The applicant, which was a community group, contended that while the PAC was considering the relevant modification request and development application, it misconstrued both the *Casino Control Act 1992* (NSW) and the *Environmental Planning and Assessment Act 1979* (NSW). As such, the applicant alleged that the PAC had made errors of law which amount to jurisdictional error. The applicant brought class 4 proceedings against five respondents:

- the commercial entity primarily responsible for the development of the southern end of Barangaroo
- the commercial entity which had made the State Significant development application for the proposed casino and resort building
- the Sydney Harbour Foreshore Authority
- the Barangaroo Delivery Authority, a statutory corporation created for the purpose of organising the development of Barangaroo generally
- the Minister for Planning, the deemed consent authority, who had delegated this authority to the PAC.[15]

Individual or organisation?

When filing a claim with the LEC, applicants classify themselves as 'individual' or 'organisation'. Parties are then identified as 'corporate' or 'non-corporate' for the purpose of calculating the filing fees (see below).

Overall, just over half of LEC applicants were recorded as individuals (51.6%), compared to a fifth (20.2%) of respondents (Figure 2 and Table A3, Appendix 2). However, this overall picture varies considerably by claim type. *Tree disputes* were almost entirely brought by applicant(s) recorded as individuals (96.6%); and the respondent(s) to these matters were also almost always individuals (94.9%).

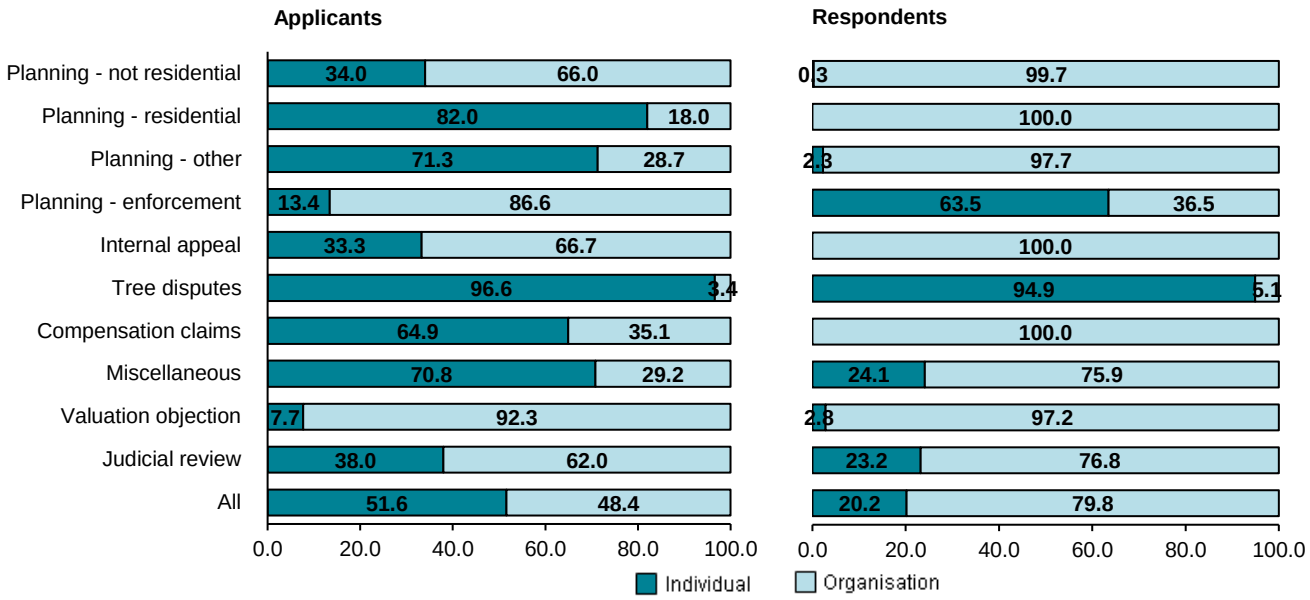
Valuation objection claims, on the other hand, are mainly brought by organisations (92.3%) and, not surprisingly, always against the government, in the form of the Valuer General (97.2% of which were recorded as an organisation).[16] Organisations were also the main applicant *for Planning – enforcement* (86.6%), *Internal appeals* (66.7%), *Planning – not residential* (66.0%) and *Judicial review* (62.0%).

[15] Millers Point Fund Incorporated v Lendlease (Millers Point) Pty Ltd [2016] NSWLEC 166, https://www.caselaw.nsw.gov.au/decision/5858bc7ce4b0e71e17f561d5

[16] In one case the respondent was recorded as an 'individual' with Valuer General entered in the 'Trading As' field. A further valuation objection claim had no respondent details recorded in the data provided. This analysis is therefore based on 36 respondents.

Organisations are the main respondent for all claim types except *Tree disputes* (94.9% are individuals) and *Planning – enforcement* actions (63.5% are individuals).

Figure 2: Percentage of LEC applicants and respondents recorded on JusticeLink as individuals and organisations



Source: LEC JusticeLink data on participants in claim proceedings for cases recorded as first finalised June–December 2016.

Data quality of individual/organisation

To review how accurately the JusticeLink categories of 'individual' and 'organisation' are being applied in LEC data, we classified all applicants and respondents into private individuals or a type of organisation (for further details see Section 4). A party was classified as an 'organisation' on the basis that there was:

- a company or other organisational name (including councils and government departments) as their name, or
- 'Pty Ltd' or 'Ltd' as part of their name, or
- a 'trading as' either within their name or in the 'trading as' field.

Table 6 shows that there was a very high level of agreement between the JusticeLink codes and the LJF codes. We coded just one party that was described as an 'organisation' on JusticeLink as an individual – this appeared from an internet search to be a sole trader that did not have a company name or ABN/ACN recorded. We coded a further five parties that were described as 'individual' on JusticeLink as a council, an independent statutory authority, a business, an educational establishment and a trustee bringing an action on behalf of a corporation. These would appear to be incorrectly recorded on JusticeLink but they are few in number.

As a further quality assurance we reviewed a selection of casefiles where *Planning – enforcement* actions appeared to have been brought by individuals, and a *Valuation*

objection claim where the respondent (the Valuer General) was not recorded as an organisation – only the latter had been incorrectly recorded.[17]

Table 6: Comparison of LEC JusticeLink recording of 'individual' and 'organisation' to LJF coding (number)

	LJF 'individual'	LJF 'organisation'
	N	N
Applicants		
JusticeLink Individual	516	3
JusticeLink Organisation	1	486
Respondents		
JusticeLink Individual	210	2
JusticeLink Organisation	0	836

Source: LEC JusticeLink data: LJF coding of entity type of participants in claim proceedings for cases recorded as first finalised June–December 2016.
Notes: Organisations include: local councils, government departments, statutory authorities, businesses and other types of organisation

Corporate or non-corporate?

Civil procedure regulations stipulate two fee rates apply to NSW courts: a standard (non-corporate) rate and a corporation (corporate) rate. Generally speaking, individuals pay a non-corporate rate and organisations pay a corporate rate. However, as illustrated in Table 7 below, the picture is not as simple as this. For instance, organisations that pay the non-corporate rate include NSW and Commonwealth government agencies, religious and charitable organisations and corporations with a turnover of less than $200,000. Sole or small business owners and business partners are listed twice and in italic: as individuals and as organisations, to illustrate that it is not clear in which of these two categories they belong.

[17] In this case the respondent was recorded as an 'individual' with Valuer General entered in the 'Trading As' field.

Table 7: Examples of entities categorised as 'corporate and non-corporate' according to the Court Services Procedure Guide (2015)

	Corporate rate^	Non-corporate (standard rate)
Individual	• A corporation pursuing claim in name of natural person (e.g. insurer) #	• Private citizen in own capacity • People who are liable for the actions of other people or entities • *Sole or small business owner?* • *Partners in partnerships?*
Organisation	• Corporations with 'Inc', 'Ltd' or 'Pty Ltd', and more than $200,000 turnover Incorporated legal practices • Medical funds • Registered clubs • The Board or Trustees of a private school • The owners – strata plan xxxx • Local councils (after 1/7/15)	• Corporations with less than $200,000 turnover, including those with 'Inc', 'Ltd' or 'Pty Ltd' • Legal practitioners who act for an individual • Liquidators • Religious and charitable organisations • State Government departments • Local councils (before 1/7/15) • NSW Ministerial Corporation • State Rail Authority Coal Mines Board • Federal Government dept. or agency • Interstate government bodies • *Sole or small business owner?* • *Partners in partnerships?*

Notes: ^ Corporations defined by s. 57A of Corporations Act 2001.
Corporate and non-corporate, as defined by the 'Court Services Procedure Guide (2015): Fees (Local and Land and Environment Courts)', p. l5.
The JusticeLink user guide (p. 28) states, in an example of an individual plaintiff creating a Statement of claim, that: 'The Fee Debtor Type drop-down list defaults to Non-corporate, change to Corporate if required (for Right of Subrogation)'.

Table 8 reports the JusticeLink data on the fee rate paid by claim type. *Valuation objection* claims and *Planning – enforcement* claims were most likely to incur the corporate rate, while *Tree disputes* and *Planning – residential* claims were most commonly brought at the non-corporate rate.

Table 8: LEC applicants recorded as 'corporate' and 'non-corporate'

		Non-corporate	Corporate
	N	%	%
Planning – not residential#	363	31.4	68.6
Planning – residential*	94	78.7	21.3
Planning – other	86	62.8	37.2
Planning – enforcement	64	12.5	87.5
Tree disputes	70	97.1	2.9
Compensation claims	56	55.4	44.6
Valuation objection	37	2.7	97.3
Judicial review	42	31.0	69.0
Miscellaneous	41	53.7	46.3
Internal appeal	9	33.3	66.7
All	**862**	**45.0**	**55.0**

Source: LEC JusticeLink data on participants in claim proceedings for cases recorded as first finalised June–December 2016.
Notes: Analysis based on one applicant per case, with organisations prioritised over individuals.
Includes large residential developments such as units and mixed use, and other developments.

Data quality of corporate/non-corporate

Nearly all applicants recorded as organisations were also recorded as 'corporate' on JusticeLink and nearly all individuals as 'non-corporate'. We found a small number of exceptions to this (Table 9). The two applicants recorded as 'individual' and 'corporate' did appear to be organisations as they had provided company names. The two recorded as 'organisations' but as 'non-corporate' were an owner's corporation and an interest group (which if they had low turnover would be correct, according to Table 7). Eight organisational respondents were recorded as 'non-corporate' and were mainly statutory authorities.

Table 9: Relationship between individual/organisation and corporate/non-corporate for LEC applicants and respondents

	Corporate	Non-corporate
	N	N
Applicants		
Individual	2	517
Organisation	485	2
Respondents		
Individual	0	212
Organisation	828	8

Source: LEC JusticeLink data on applicants and respondents to claim proceedings in cases recorded as first finalised June–December 2016.

Use of ABN or ACN

Organisations can also provide an ABN and/or ACN for themselves and the respondent. An ACN is only issued to companies. An ABN is issued by the Australian Tax Office to any trading business and can be used to identify the business to the government and community. If an organisation has an ACN, the ABN consists of the ACN with a two-digit prefix.

These numbers could be used to link organisations to the categories already defined through the Australian Business Register. However, the extent to which an ABN, ACN or one or either is captured for organisations is variable (Table 10). Perhaps surprisingly, it is higher for respondents (69.7%) than for applicants (37.0%). However, this is because the field is well completed for local councils which tend to have frequent user IDs. These IDs automatically propagate information about the party into the JusticeLink system.

Table 10: Percentage of LEC 'organisation' applicants and respondents with an ABN and/or ACN recorded in JusticeLink

	App.	Resp.	Applicants			Respondents		
			ABN	ACN	Either	ABN	ACN	Either
	N	N	%	%	%	%	%	%
Planning – not residential#	254	372	5.5	21.3	23.6	78.5	0.3	78.8
Planning – residential*	20	94	20.0	20.0	35.0	86.2	0.0	86.2
Planning – other	33	86	3.0	21.2	24.2	77.9	0.0	77.9
Planning – enforcement	58	42	67.2	8.6	75.9	19.1	28.6	47.6
Tree disputes	3	5	0.0	0.0	0.0	0.0	0.0	0.0
Compensation claims	27	55	7.4	44.4	51.9	90.9	3.6	94.6
Valuation objection	36	35	8.3	47.2	55.6	2.9	0.0	2.9
Judicial review	31	96	32.3	16.1	48.4	22.9	18.8	41.7
Miscellaneous	19	41	42.1	10.5	52.6	43.9	7.3	51.2
Internal appeal	6	10	0.0	33.3	33.3	80.0	0.0	80.0
All	**487**	**836**	**16.6**	**22.2**	**37.0**	**65.4**	**4.3**	**69.7**

Source: LEC JusticeLink data for applicants and respondents recorded as 'organisations' in proceeding claims of cases recorded as first finalised June–December 2016.
Notes: All ABNs had 11 digits, and ACNs had 9 digits. The validity of these was not assessed.
Includes large residential developments such as units and mixed use, and other developments.
* Restricted to small single residential dwelling matters.

Location of applicants and respondents

Applicants provide full contact details for themselves and the respondent at the time of filing. An address can be categorised as a local address, residential address or primary address. There is some use of solicitor's addresses, as primary contact address, but to a lesser extent than at other courts. There does not appear to be a field that collects the address of the location of the dispute or the property to which the application relates. Such analysis may provide information on the extent to which courts are providing services across the jurisdiction, although it will also reflect the geographical prevalence of disputes and alternative options for dispute resolution. To demonstrate the potential value of this information we have mapped here the residential postcode of first applicants in the 80% of *Tree dispute* claims for which the postcode of the applicant and the respondent matched, on the grounds that these were indeed likely to be the place of the dispute.[18]

Figure 3: Residential postcode of first applicants in Tree dispute claims

Source: LEC JusticeLink data on all applicants and respondents to claim proceedings in cases recorded as first finalised June–December 2016.

[18] We reviewed a sample of the 20% for which the two postcodes did not match. From the information provided it wasn't possible to tell why this was the case, except in one claim where an applicant had not yet moved into the property relating to the dispute.

Improving information about the parties to claims

Whether or not a party is an organisation or individual is currently well recorded. However, improved capture of ABN/ACN identifiers would facilitate the coding of organisations into types, the value of which is explored in Section 4. There is also the potential to capture information about the geography of disputes, and the extent to which they are located in particular areas of the state by separately collecting:

- the participant's contact address
- the address of the legal representative (or indicate that this is not to be provided via the participant address fields)
- the address of the property that relates to the dispute e.g. the lot number/address of the planning application decision that is being appealed or the location of the tree dispute.

Information on the place of dispute not only provides information on the extent to which regional areas are accessing the court but can also support, for instance, the planning of transport requirements for site visits and hearings.

4. What types of organisations are involved in Land and Environment Court claims?

DATA QUALITY – LIMITED
Although JusticeLink collects sufficient detail for the type of organisation to be identified and for some types of claim the organisation is determined by legislation, a further coding exercise is required to classify these for the purposes of analysis. This detail of information could be captured with better recording of ABN/ACN or alternatively, requiring applicants to categorise the parties from a small set of organisation codes. It could also be useful to separately capture the role of applicants for some classes of action.

The type of organisation involved in a claim as an applicant or respondent is not codified within JusticeLink and can only be determined by reference to the name of the party and where available their trading name. For some types of matter the type of organisation is predetermined by the nature of the claim. So, for instance, all appeals against government decisions must have a government respondent while nearly all civil enforcement is by government agencies as the applicant.

To facilitate comparison of the types of entities involved in LEC claims with those from other courts/tribunals, a similar exercise was undertaken as in other reports, with all organisations manually classified into an entity type.

Measuring applicant and respondent types

This coding exercise indicated that more than half of LEC applicants (51.4%) were individuals, about a third (34.2%) were a business of some type, and 5.6% were local councils (Table 11). Government entities made up the majority of respondents: 56.8% of respondents were local councils, 9.0% state government, and 4.9% statutory authorities. Just 6.6% of respondents were a business.

Table 11: LJF entity types for applicants and respondents in LEC claims

LJF entity type (broad category)	Applicants	Respondents
	N=1,005	N=1,047
	%	%
Individual	51.4	20.1
Local council	5.6	56.8
NSW Government	0.1	9.0
Ind. statutory authority	0.2	4.9
Business	34.2	6.6
Other	8.5	2.7
Total	**100.0**	**100.0**

Source: LEC JusticeLink data: LJF coding of entity type of participants in claim proceedings for cases recorded as first finalised June–December 2016
Notes: 'Other' largely consists of interest groups, strata, educational organisations, land councils, trustees, utilities and companies in their capacity as land owners. The details of two participants in one case were not included.

Table 12 provides a more detailed picture of the types of applicants and respondents in the LEC grouped by their broad entity type as reported in Table 11. Property developers/construction companies make up most of the business applicants (and account for 17.3% of all applicants).

Table 12: Detailed LJF entity types of applicants and respondents in LEC claims

Entity type	Applicants	Respondents
	N=1,005	N=1,047
	%	%
Individual	51.4	20.1
Local council	5.6	56.8
NSW Government (e.g. Roads and Maritime Services, Environmental Protection Authority, Minister for Planning)	0.1	9.0
Independent statutory authority		
Valuer General of NSW	0.2	3.5
Independent statutory authority / officer / planning panels	-	1.3
Business		
Property developer / construction company	17.3	2.2
Financial / professional / health / transport / agricultural / manufacturing / investment / mining	3.2	1.8
Architect/ building design / town planning / environmental planning / consultants / surveyors	4.1	0.1
Construction/building related (excl. developers)	2.6	0.5
Property related services (e.g. rental space, leasing, property management; real estate agent)	2.1	0.6
Project management	1.7	0.3
Leisure industry (e.g. hotels, restaurants, clubs)	1.3	0.5
Retail and wholesale	1.1	0.4
Miscellaneous organisation/company	0.9	0.3
Other		
Organisations in their capacity as land owner#	2.3	0.3
Trustee	1.6	0.3
Strata owners and managers, and owners / Body corporate	0.9	0.8
Other organisations (e.g. interest groups, representing associations, religious groups)	1.4	0.2
Aboriginal land councils	1.1	0.2
Educational (e.g. childcare)	1.1	-
Utilities	0.1	1.0
All	**100.0**	**100.0**

Source: LEC JusticeLink data: LJF coding of entity type of participants in claim proceedings for cases recorded as first finalised June–December 2016. The details of two participants in one case were not available.
Notes: '-' indicates that there were no applicants or respondents of this type.
These are organisations that could not otherwise be categorised whose role at LEC was as an owner of land.

Who is bringing claims against whom?

Our analysis of the LEC entity types also allowed us to explore against whom different types of entities were taking action (Table 13). Where there was more than one applicant or respondent, one party only was selected from, in decreasing order of priority: local council, government, statutory body, business, other organisation and individual.

The most common actions in the LEC involved:

- business against local council (33.7%)
- individual against local council (32.0%)
- individual against individual (8.4%)
- other organisations against local council (3.6%)
- local council against individual (3.5%)
- individual against NSW Government (3.3%).

Table 13: Applicant versus respondent by entity type, in all LEC claims

		Respondent type						
		Local council	NSW Government	Ind. statutory authority	Business	Other	Individual	All respondents
		% of all claims						
Applicant type	Local council	0.2	0.6	0.0	1.9	0.2	3.5	6.4
	NSW Government	0.0	0.0	0.0	0.0	0.0	0.1	0.1
	Ind. statutory authority	0.0	0.0	0.2	0.0	0.0	0.0	0.2
	Business	33.7	2.5	2.2	0.4	0.7	0.0	39.5
	Other	3.6	2.6	1.8	0.4	0.2	0.4	8.9
	Individual	32.0	3.3	0.2	0.5	0.5	8.4	44.8
	All applicants	69.6	9.0	4.3	3.0	1.6	12.4	100.0

Source: LEC JusticeLink data: LJF coding of entity type of participants in claim proceedings for cases recorded as first finalised June–December 2016.
Notes: Based on 854 proceeding claims for one applicant and one respondent. Where there are multiple applicants or respondents, these are prioritised in the order in the table, with local council taking highest priority. 'Other' largely consists of interest groups, strata, educational organisations, land councils, trustees, utilities and companies in their capacity as land owners.

An example of a case involving a business as the applicant and a local council as the respondent is provided in Box 4.

Box 4: Example of case involving a business and a council

Claim type: Application class 1 – appeal against deemed refusal to modify development consent (s. 97AA Environmental Planning and Assessment Act)
The respondent was a local council which had granted consent to a development application lodged by a large corporate developer. This authorised demolition of existing structures and construction of a residential flat development under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPPARH).

The applicant lodged an application to modify the consent. The respondent had not determined this application within the prescribed time so the applicant appealed its deemed refusal pursuant to s. 97AA(b) of the Act.

The claim was upheld in a judgment and the modification application lodged with the local council was approved.[19]

What types of entities are involved in what types of claim?

Our coding of organisations can be used to demonstrate how the types of applicants and respondents vary by claim type.

Applicants

Table 14 shows the types of applicants bringing each claim type. Key observations include:

- Nearly two-thirds (60.7%) of *Planning – not residential* claims were brought by business applicants, with most of the remainder brought by individuals (34.1%). The latter tended to be for developments such as boarding houses and mixed use buildings.[20]
- More than 8 in 10 (82.0%) of *Planning – residential* claims, and 7 in 10 (70.4%) of *Planning – other* claims were brought by individuals.
- Over two-thirds (67.2%) of *Planning – enforcement* claims were brought by local councils.
- Nearly all (96.6%) *Tree dispute* claims were brought by individual applicants.
- Just under two-thirds (63.6%) of *Compensation claims* were brought by individual applicants, with businesses bringing most of the remainder (22.1%).
- Approximately half (48.7%) of *Valuation objection* claims were brought by business applicants, with most of the remainder brought by other types of applicants such as trustees and companies acting in their capacity as land owners (38.5%).

[19] Landmark Group Australia Pty Ltd v Sutherland Shire Council [2016] NSWLEC 1577, https://www.caselaw.nsw.gov.au/decision/5840e1a3e4b0e71e17f55b5c

[20] For instance, see Blazic v Willoughby City Council [2016] NSWLEC 1282; David Fox v North Sydney Council [2016] NSWLEC 1366.

- The types of applicants bringing *Judicial review* claims was slightly more spread between individuals (38.0%), other types of applicants (such as interest groups, strata related and Aboriginal land councils) (26.0%), businesses (20.0%) and local councils (16%).

Table 14: Type of applicant bringing each LEC claim type

		Individual	Local council	NSW Government	Independent statutory authority	Business	Other
	N	%	%	%	%	%	%
Planning – not residential#	384	34.1	-	-	-	60.7	5.2
Planning – residential*	111	82.0	-	-	-	18.0	-
Planning – other	115	70.4	-	-	-	22.6	7.0
Planning – enforcement	67	13.4	67.2	1.5	-	13.4	4.5
Tree disputes	88	96.6	-	-	-	-	3.4
Compensation claims	77	63.6	1.3	-	-	22.1	13.0
Valuation objection	39	7.7	-	-	5.1	48.7	38.5
Judicial review	50	38.0	16.0	-	-	20.0	26.0
Miscellaneous	65	70.8	1.5	-	-	7.7	20.0
Internal appeal	5	33.3	11.1	-	-	55.6	-
Total	**1,005**	**51.4**	**5.6**	**0.1**	**0.2**	**34.2**	**8.5**

Source: LEC JusticeLink data on participants in claim proceedings of cases recorded as first finalised June–December 2016.
Notes: 'Other' largely consists of interest groups, strata, educational organisations, land councils, trustees, utilities and companies in their capacity as land owners. The details of two participants in one case were not included.
'-' indicates that there were no applicants of this type.
Includes large residential developments such as units and mixed use, and other developments.
* Restricted to small single residential dwelling matters.

Respondents

Table 15 indicates the types of respondents for each claim type. Key observations include:

- In nearly all of the *Planning – not residential, Planning – residential and Planning – other* claims, the respondent was identified as a local council (97.3%, 100.0%, and 89.8% respectively).
- Respondents in *Planning – enforcement* claims were mainly individuals (63.5%) and businesses (20.9%).
- In nearly all *Tree dispute* claims, the respondent was identified as an individual (94.9%).

- In 78.2% of *Compensation claims* the NSW Government was the respondent, while a local council was identified as the respondent in 10.9% of claims.
- All of the *Valuation objection* claims had an independent statutory authority as the respondent, which in all cases was the Valuer General of NSW.[21]

Table 15: Type of respondent bringing each LEC claim type

Claim type		Individual	Local council	NSW Government	Independent statutory authority	Business	Other
	N	%	%	%	%	%	%
Planning – not residential#	372	0.3	97.3	-	0.5	1.9	-
Planning – residential*	94	-	100.0	-	-	-	-
Planning – other	88	1.1	89.8	8.0	-	1.1	-
Planning – enforcement	115	63.5	7.0	3.5	-	20.9	5.2
Tree disputes	98	94.9	-	-	-	1.0	4.1
Compensation claims	55	-	10.9	78.2	-	-	10.9
Valuation objection	36	-	-	-	100.0	-	-
Judicial review	125	23.2	20.8	19.2	7.2	24.0	5.6
Miscellaneous	54	24.1	22.2	29.6	7.4	7.4	9.3
Internal appeal	10	-	80.0	-	-	20.0	-
Total	**1,047**	**20.1**	**56.8**	**9.1**	**4.8**	**6.6**	**2.7**

Source: LEC JusticeLink data on participants in claim proceedings of cases recorded as first finalised June–December 2016.
Notes: 'Other' largely consists of interest groups, strata, educational organisations, land councils, trustees, utilities and companies in their capacity as land owners. The details of two participants in one case were not included.
'-' indicates that there were no applicants of this type.
Includes large residential developments such as units and mixed use, and other developments.
* Restricted to small single residential dwelling matters.

Who is bringing claims against whom, by claim type

To summarise the main types of claim brought by different combinations of applicant and respondent, Table 16 collapses the organisation types further into three broad groups: government related entities, businesses, and other types of organisation. The main combinations are presented which together accounted for 96% of claim types. The most common claim type brought by businesses against government entities were *Planning – not residential*: 70.1% of claims were of this type. All government actions against

[21] In one case the respondent was recorded as a government department with Valuer General entered in the 'Trading As' field.

individuals related to *Planning – enforcement*. The majority of private individual against individual actions were *Tree disputes* (81.9%).

Table 16: First three most common LEC claim types by main combinations of applicant and respondent

	% of claims	First most common claim	Second most common claim	Third most common claim
Business vs Council/Gov/Authority	38.4	Planning – not residential (70.1%)	Planning – other (7.9%)	Planning – residential (6.1%)
Other organisation vs Council/Gov/Authority	8.0	Planning – not residential (25.0%)	Valuation objection (20.6%)	Judicial review (17.6%)
Individual vs Council/Gov/Authority	35.5	Planning – not residential (38.0%)	Planning – residential (24.4%)	Planning – other (16.2%)
Council/Gov/Authority vs business	1.9	Planning – enforcement (75.0%)	Judicial review (18.8%)	Internal appeal (6.3%)
Council/Gov/Authority vs individual	3.6	Planning – enforcement (100.0%)	-	-
Individual vs individual	8.4	Tree disputes (81.9%)	Miscellaneous (11.1%)	Planning – enforcement (5.6%)

Source: LEC JusticeLink data on participants in claim proceedings of cases recorded as first finalised June–December 2016.
One applicant/respondent per case, in decreasing order of priority: government (local council, state government, statutory authorities), business, other organisation, individual. Together the combinations in the table make up 96% of claims with both an applicant and respondent (N=818).

Improving information about applicants and respondents

A more informative categorisation of the parties to a claim could be justified given the range of organisations involved in LEC claims and their differential level of experience with the court. As discussed in Section 3, an ABN or ACN number could be used to classify organisations. Alternatively, applicants could be asked to select an organisational code from a short list of options, such as Commonwealth government, state government, local government, small business (<20 employees), micro business (<4 employees, sole business etc.) when filing in the court. While applicants and their representatives are usually well placed to identify the category of their own entity, they may be less reliable in identifying the entity type of the respondent although it should be achievable at the highest category level (e.g. individual, government, business, other).

It could also be useful to separately capture the role of applicants for some classes of action at least. For instance, in *Compensation claims* applicants may be bringing a case as a landowner, or as a lessee, while in planning related matters applicants could be a property developer, a residential property owner, or an enforcing agency.

5. Do respondents defend claims in the Land and Environment Court?

DATA QUALITY – UNCLEAR
Although in practice most LEC claims will require the respondent to actively respond there is no one source of information to indicate the extent of this involvement. For some types of case, the respondent is required to file a Statement of facts and contentions. Notices of appearance are another indication that the respondent wishes to participate in the proceedings. A complete review of the usefulness of this information was limited by not all notices being transferred into JusticeLink data fields. This is a temporary issue.

Information on the extent to which claims lodged with the court and tribunal system are defended is of value in understanding whether or not respondents take the opportunity to present their side of the case or engage at all with the applicant. The active involvement of the respondent can also have implications for the court resources required to assist in the resolution of claims. In the LEC, reflecting that the majority of respondents are government entities and because respondents can in some cases be compelled to participate by the court, there is usually an active respondent.

Measuring respondent involvement

In the LEC, there is no one way to identify the extent of involvement in the case by the respondent. Notices of defence are not required for these types of matter.[22] Instead, participation of respondents must be inferred from the filing of other documents, and the requirements vary according to the type of matter (see Appendix 4 for a summary of the procedures for responding to claims by class type). Required responses may include Notices of appearance (when the respondent or their representative wishes to appear before the court) and Statements of facts and contentions (or similar, depending on the case type). A Statement of facts and contentions is usually filed by the respondent not the applicant. It provides the details of the case and outlines the issues for determination by the LEC.[23]

Where these documents are not required, the involvement of the respondent has to be inferred from other events that occur, such as:

[22] One notice of defence was included in the data provided to us.

[23] Land and Environment Court of New South Wales 2017, Practice Note: Class 1 Development Appeals, Sydney, viewed 10/1/2018, http://www.lec.justice.nsw.gov.au/Documents/Practice%20Notes/PN_Class_1_Development_Appeals.pdf

- The court is notified that the respondent has legal representation.
- A contested hearing takes place.
- A mediation or conciliation meeting occurs.
- There is an agreement/consent outcome.

Even where documents are filed, this does not necessarily indicate whether the respondent attended the LEC. Attendance of respondents at hearing is sometimes captured on the paper casefiles, although if they have a legal representative, only the legal representative is recorded. This information does not appear to be routinely transferred to JusticeLink.

Levels of legal representation are reported in Section 6, while the proportion of claims having hearings and mediations/conciliations is covered in Section 7. Here we consider only data on Notices of appearance and Statements of facts and contentions.

Appearance notice by claim type

An initial analysis found that less than a third of LEC claims had a Notice of appearance from a respondent recorded. Further investigation suggested that this was due to this information not being entered in the relevant data field in the transfer to JusticeLink of open cases. Restricting the analysis to the 294 LEC cases commenced after the transfer increases this proportion to 71% (Table 17). However, due to the way the sample was drawn, these cases are likely to over-represent short cases so these findings should only be taken as indicative of the information that could be available after all cases commenced prior to the transfer have finalised.

Table 17: Percentage of LEC claims with at least one respondent filing a Notice of appearance in cases lodged between June and December 2016

	N	%
Planning – not residential[#]	94	83.0
Planning – residential*	42	90.5
Planning – other	37	67.6
Planning – enforcement	24	50.0
Tree disputes	42	52.4
Compensation claims	8	87.5
Valuation objection	22	63.6
Judicial review	14	64.3
Miscellaneous	7	42.9
Internal appeal	4	25.0
All	294	71.1

Source: LEC JusticeLink data on proceedings and listings of cases recorded as first finalised June–December 2016. Of these, only cases lodged between June and December are included.
Notes: # Includes large residential developments such as units and mixed use, and other developments.
* Restricted to small single residential dwelling matters.

Appearance notices by entity type

Again, noting that restricting this analysis to cases lodged after the transfer to JusticeLink will bias the sample to short cases, an analysis by the type of respondent indicates that a higher proportion of government entities were recorded as filing a Notice of appearance than other types of respondent (Table 18). This will reflect the requirements of the kinds of cases these entities are involved in (see Appendix 4).

Table 18: Proportion of LEC respondents who filed a Notice of appearance in cases lodged between June and December 2016

	Number of respondents in cases first lodged June–December 2016	Percentage of respondents that filed a Notice of appearance
	N	%
Local council	192	78.7
NSW Government	14	71.4
Ind. statutory authority	28	71.4
Business	17	52.9
Other	6	50.0
Individual	96	44.8
All respondents	**353**	**66.9**

Source:. LEC JusticeLink data: LJF coding of entity type of participants in claim proceedings for cases first finalised June–December 2016 Only cases lodged between June and December 2016 included, which will bias the sample to shorter cases. There were 294 cases lodged in this period with a total of 353 respondents.

Statements of facts and contentions by claim type

The data provided on Statements of facts and contentions was held in two separate data fields which were combined for the purpose of this analysis.[24] Relevant document types included:

- Statement of facts and contentions
- Statement of facts
- Amended statement of facts and contentions
- Agreed statement of facts
- Statement of facts and contentions in reply.

As with appearance notice data, cases commenced after the transfer to JusticeLink were far more likely to have a Statement of facts and contentions or a Statement of facts recorded in the data (40.8% compared to 25.5% of all LEC claims finalised during this period).[25] Statements were most likely to be filed for *Planning – not residential* (77.7%), *Planning – residential* (66.7%) (Table 19). However, these claims will not be representative

[24] The data fields were document description and document filed.

[25] To exclude statements filed by applicants it would be necessary to link the identity of the entity filing the statement to their role. This was beyond the scope of this analysis. A few cases where the applicant filed the statement will therefore be included in these figures.

of all LEC claims as they are likely to over-represent short cases. These findings should therefore only be taken as indicative of the information that could be available after all cases commenced prior to the transfer have finalised.

Table 19: Percentage of LEC claims where a Statement of facts and contentions or a Statement of facts was recorded in cases lodged between June and December 2016

		Claims in which a statement was recorded
	N	%
Planning – not residential#	94	77.7
Planning – residential*	42	66.7
Planning – other	37	27.0
Planning – enforcement	24	4.2
Tree disputes	42	7.1
Compensation claims	8	na
Valuation objection	22	50.0
Judicial review	14	4.5
Miscellaneous	7	0.0
Internal appeal	4	na
All	294	40.8

Source: LEC JusticeLink data on claim proceedings for cases recorded as first finalised June–December 2016.. Only cases lodged between June and December 2016 included, which will bias the sample to short cases. There were 294 cases lodged in this period with a total of 353 respondents.
Note: Includes a small number of cases where the applicant rather than the respondent filed the statement. Excludes amended, agreed and Statements in reply.
Includes large residential developments such as units and mixed use, and other developments.
* Restricted to small single residential dwelling matters.

Statement of facts and contentions by entity type

For claims filed after the transfer to JusticeLink, Statements of facts and contentions were most often recorded for local council respondents (Table 20). For the reasons discussed above, these findings should not be relied on but are indicative of the information that will be available after cases that commenced prior to the transfer to JusticeLink are finalised.

Table 20: Proportion of LEC respondents who filed a Statement of facts and contentions in cases lodged between June and December 2016

		Respondents that filed one or more Statement of facts and contentions
	N	%
Local council	192	45.8
NSW Government	14	7.1
Ind. statutory authority	28	10.7
Business	17	0.0
Other	6	0.0
Individual	96	3.1
All respondents	**353**	**26.9**

Source: LEC JusticeLink data: LJF coding of entity type of participants in claim proceedings for cases recorded as first finalised June–December 2016. Only cases lodged between June and December 2016 included, which may bias the sample to shorter cases. There were 294 cases lodged in this period with a total of 353 respondents.
Note: Includes Statements of facts and contentions and Statements of facts. Excludes: amended, agreed and Statements in reply.

Notice of appearance or Statement of facts and contentions

As the procedures required of respondents vary by claim type, a more complete picture of the extent to which the data can indicate the involvement of respondents is given by whether each respondent filed a Notice of appearance or a Statement of facts and contentions. Restricting the analysis to claims lodged after the transfer to JusticeLink indicates that overall 70.3% of respondents had at least one of these documents recorded (Table 21).

Table 21: Proportion of LEC respondents who filed a Notice of appearance and/or a Statement of facts and contentions in cases lodged between June and December 2016

		Respondents that filed one or more Notice of appearance or Statement of facts and contentions
	N	%
Local council	192	83.9
NSW Government	14	71.4
Ind. statutory authority	28	71.4
Business	17	52.9
Other	6	50.0
Individual	96	46.9
All respondents	**353**	**70.3**

Source: LEC JusticeLink data: LJF coding of entity type of participants in claim proceedings for cases recorded as first finalised June–December 2016.. Only cases lodged between June and December 2016 included, which may bias the sample to shorter cases. There were 294 cases lodged in this period with a total of 353 respondents.
Note: Includes Statements of facts and contentions and Statements of facts. Excludes amended, agreed and Statements in reply.

Improving information about respondents defending claims

Neither data on Notices of appearance nor Statements of facts and contentions gives a complete picture of the extent to which respondents are actively engaged in LEC matters, in part because the procedures that respondents are required to follow vary by claim type (Appendix 4). These document types do though provide relevant information in this respect and the impact of the transfer to JusticeLink on the reliability of the data will diminish over time.

Of most value would be a method of capturing as data fields in JusticeLink who attends hearings, conferences and other meetings – distinguishing effectively between the parties themselves and their legal representatives. This information is not currently discernible from the LEC data.

6. Who is represented in the Land and Environment Court and for what claims?

DATA QUALITY – GOOD
Details of representatives are well recorded on JusticeLink. There is a slight under-count, for instance where cases complete before representative details are entered and, temporarily, due to some representatives' details not being transferred onto JusticeLink.

Whether or not parties are represented may affect the way a claim is presented and defended, the progression of a case and how it concludes – as well as having direct cost implications for the parties and potentially indirect ones for the court. The parties may be represented by a legally qualified practitioner or an agent that is acting on behalf of the party.

Measuring representation data

Details (names and addresses) of representatives are captured on JusticeLink together with the date the representation is effective from, and the date it is effective to. Representative details can be linked to each party within each proceeding. Each proceeding within a case may have different information regarding representation.

Concluding whether the parties to a case are represented or not isn't entirely straightforward as decisions need to be made about how to define 'representation' for reporting purposes, such as:

- representation during the claim proceeding only or for any proceeding within the case?
- counted for each party, any party or the first named party only?
- at any point during the case or for specific events within a case, such as at the date of outcome?

Quality of representation data

There is no specific field to capture whether a party is self-represented, although this is sometimes noted on the casefile papers. Self-representation can, therefore, only be assumed where there is no legal representative recorded in JusticeLink. However, as in other jurisdictions, this does rely on JusticeLink accurately capturing all legal representation. A review of casefiles with no representation recorded, found this was usually accurate, although there were a few instances where legal representatives and other agents (such as from NSW Trustee and Guardian) were not captured on JusticeLink.

One of these was an urgent application that presumably determined too quickly for details to be entered.

A further issue for the analysis presented here is that because the transfer from the original LEC management information system to JusticeLink focused on information required for the completion of a case, details of legal representatives no longer involved with the case are not captured on JusticeLink. For this reason, it is not possible to determine whether an applicant was represented at the lodgment of the claim (where it was prior to June 2016) unless they have retained the same representative throughout. It also means that the rate of representation, as measured by the parties having any representation recorded, may be a slight under-count if a previously represented party was no longer represented at the point of the transfer. This is a temporary issue only as it does not affect cases lodged after the transfer.

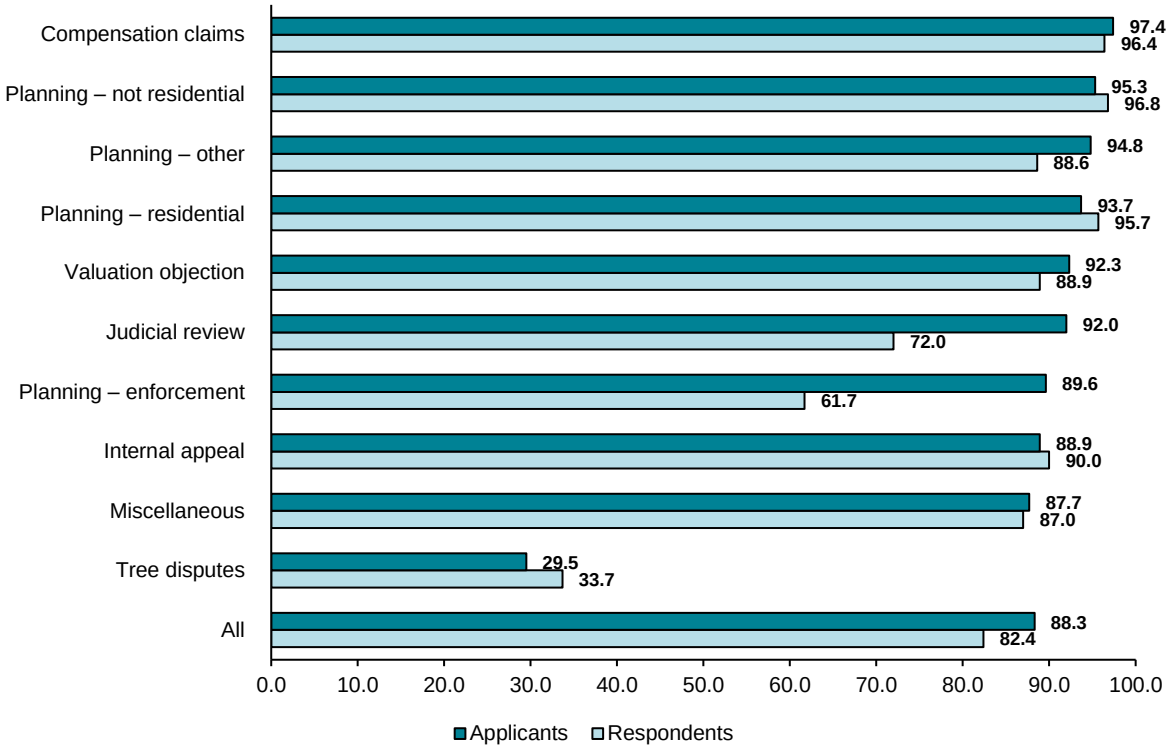
Representation by claim type

Due to the data limitations caused by the transfer, the best measure of representation is whether any applicant or respondent to the claim proceeding had a representative recorded on JusticeLink for any proceeding at any point during the case.[26] Overall, 88.3% of applicants and 82.4% of respondents had a representative recorded according to this definition.

Bearing in mind the limitations with the data, Figure 4 (Table A4, Appendix 2) indicates that for most claim types the proportion of applicants represented is roughly in line with the proportion of respondents. The exceptions are *Planning – enforcement* and *Judicial review*, where the respondent is less likely to have legal representation recorded than the applicant. Rates of representation are highest for *Planning* and *Compensation claims*. They are lowest for *Tree disputes*. For the latter less than a third (29.5%) of applicants had representation, and about a third (33.7%) of respondents.

[26] An alternative measure of representation is the proportion of claims in which the applicants or respondents are represented. This approach gives slightly higher estimates of representation. This is shown in Table A5, Appendix 2.

Figure 4: Percentage of applicants and respondents with representation in LEC claims

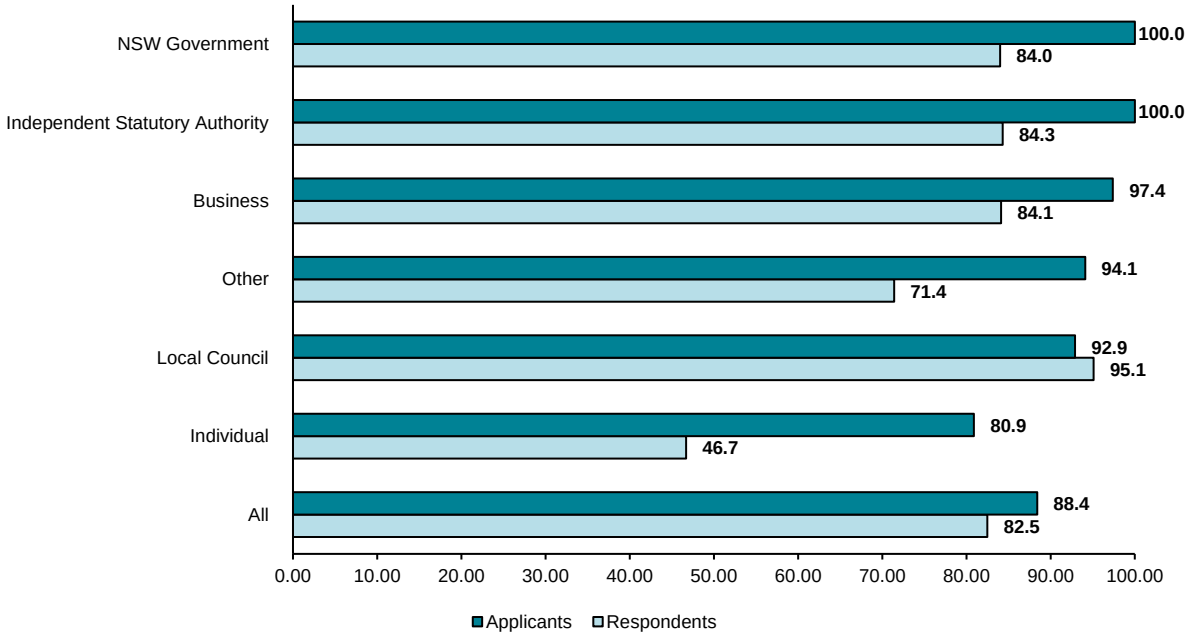


Source: LEC JusticeLink data for applicants and respondents in claim proceedings of cases recorded as first finalised June–December 2016.
Notes: An applicant / respondent is counted as represented if any legal representative details are recorded for any proceeding within their case, whatever the duration of the legal representation.

Representation by entity type

Different types of entities have differing representation rates. Using our categorisation of organisations into entity types, Figure 5 (Table A6, Appendix 2) indicates that local councils, state government, statutory authorities and businesses are almost always recorded as represented when they are the applicant. Other types of organisations have slightly lower rates of representation, particularly when they are the respondent. Private individuals have the lowest rates at 80.9% of applicants and just 46.7% of respondents (see Box 5 for an example).

Figure 5: Representation of parties in LEC claims by entity type



Source: LEC JusticeLink data: LJF coding of entity type of applicants and respondents in claim proceedings of cases recorded as first finalised June–December 2016.

Box 5: Case study on representation

Type of claim: Planning law – Civil enforcement (s. 123) Environmental Planning and Assessment Act

The applicant was a local council and was represented throughout the case. The respondent was an individual and there was no evidence on either the paper file or on JusticeLink to indicate they were represented at any point. The respondent attended all listings in person.

The applicant was seeking multiple orders against the respondent in regard to the use of their property and associated materials. Judgment was awarded in favour of the applicant.

Improving information about representation

The most useful improvement to data on representation would be to specifically capture whether the parties are representing themselves at the point of claim and at any hearing. Although in theory this can be determined from the absence of a legal representative recorded against the party, our casefile review indicated that these details are not always transferred onto JusticeLink, for instance when the case concludes swiftly.

On the current data, there are alternative ways of measuring representation which need to be considered to ensure reporting is consistent across jurisdictions, including:

- whether representation recorded against only the claim proceeding or any proceeding within a case should be counted
- whether all applicants and/or all respondents should be represented for the parties to a case to be defined as represented – or whether if one applicant/respondent is represented this is sufficient
- the point(s) in time at which representation is counted – should any period of self-representation define the party to the case as being self-represented
- whether the type of representative should be reported (e.g. lawyer, authorised officer or other type of agent).

Even if details of a representative are recorded, the extent of their involvement in a case cannot easily be discerned from JusticeLink. When a representative attends a hearing or other event, this is generally captured on the paper casefile cover sheet. Although there is a field called 'attendance' on JusticeLink, this did not appear to reflect the information on the cover sheet.

7. How do claims progress in the Land and Environment Court?

DATA QUALITY– GOOD
It is feasible to track the progress of cases from listing or order data. Information on listings could be amended to facilitate analysis by separating the various elements of an event (e.g. type of event, location, who leading, about what). It was not possible to fully assess the data quality of events and orders as, understandably, not all historical information about cases was transferred to JusticeLink in a way that enabled data extraction. This is a temporary issue as for cases that commenced after the transfer, the quality of information is good.

When a claim is brought to the LEC it will go through various stages before it reaches a conclusion: some of these are within the control of the LEC (such as making directions or setting a hearing date), while others are initiated by the parties (such as reaching agreement and/or discontinuing a claim).

Different types of claim follow different paths, which will in turn affect the input required from the court and from the parties. Understanding these pathways can be useful in planning court business, as well as providing a baseline against which case management reforms can be assessed.

Measuring claim progression

There are several possible metrics to describe the progress of claims including:

- events, such as case management meetings and hearings[27]
- administrative activity, such as recording the return of subpoenas
- orders made by the court, and
- the elapsed time between the filing of a claim and its finalisation.

Once lodged, the registry will list a case for its first event on a specified date on which a sitting of this event type is occurring. JusticeLink includes one 'listing' field which attempts to capture a number of features of an event in one variable. These elements include: the broad type of event (e.g. hearing, conference), the sub-category of event (e.g. s. 4A conciliation, interlocutory hearing) who will deal with it (e.g. duty judge, registrar), how it will take place (e.g. telephone, onsite, court), and what it is about (e.g. trees, class 3). The full

[27] The Record of Proceedings (ROP) on JusticeLink records court related activity in a claim from lodgment to finalisation including administrative actions such as sending letters. This is an extensive and complex set of data that we did not review in this project. However, it is another potentially useful source of information on case progression, which would require further investigation. The ROP also indicates activities of parties in their interaction with the court and could provide insight into party involvement in the progress of claims.

list of events recorded is provided in Table A7 in Appendix 2. Table 22 provides a summary description of our suggested groupings of the main events into listing types.

Table 22: Descriptions of the LEC main listing types

Listing types	Description
Directions hearing/ directions	A directions hearing is a short hearing before the registrar or list judge to determine whether a matter should be listed for a conference, mediation, or a hearing. Orders to prepare a matter for hearing can also be made at a directions hearing.
Adjourned hearing/ conciliation/ mediation	Adjourned hearing/ conciliation/ mediation signifies another date of listing where the matter has been stood over (postponed) to another listing date.
Hearing/ consent order hearing	Depending on the class, these can take the form of a court hearing or an onsite hearing and take place before a judge or commissioner.
Conciliation conference/ mediation	Conciliation and mediation are processes in which the parties to a dispute, with the assistance of an impartial conciliator for the former, identify the issues in dispute, develop options, consider alternatives and endeavour to reach agreement.
Tree directions hearing[1]	A directions hearing specifically for matters in the Tree dispute list. Can take place face to face or by telephone.
Judgment	A hearing for the purpose of making a judgment.
Return of subpoena	A court attendance where directions are made or if the subpoena is contested, issues are determined.

Note: See Table A7 in Appendix 2 for the full LJF grouping of LEC listing types. Other listing types include: Mention, Online Court and miscellaneous listings.
[1] These are described as 'Tree conferences' in JusticeLink data.

Each listing event will result in an outcome, described as an order on JusticeLink. If the order is in an adjournment, then the claim is allocated a further listing type, which describes the details of the next event required (e.g. onsite hearing, registrar telephone directions hearing).

In this section we explore the available information on court events and orders, excluding final orders. Final orders are discussed in Section 8 and length of time from filing to finalisation is discussed in Section 9.

Quality of claim progression data

When the listings for existing cases were transferred to JusticeLink from the previous management information system, this was most efficiently done as a document of record as there was no administrative benefit to entering the listings into the JusticeLink data fields. [28] This means that for cases commenced prior to the transfer, early listings are probably not

[28] This information is recorded on JusticeLink but not in an extractable format for analysis.

captured in the dataset we analysed. Complete information on orders has, however, been transferred.

An analysis of listings data is therefore currently compromised by not all events for cases commenced prior to June 2016 having been transferred into JusticeLink data fields. However, just presenting findings for cases commenced after June (but finalised before the end of 2016) would over-represent shorter cases. For this reason, no data on listings is presented here. However, we can confirm that it is feasible to analyse the number and type of listing events by claim type. The variation in types of listing reflect procedures mandated for each claim type by legislation but the count and temporal relationship between listings may provide information to inform efficient case management.

Box 6: Conciliation and mediation in LEC

Conciliation is one of the dispute resolution processes offered by the LEC as a way to achieve just, quick and cheap resolution of disputes as well as ownership of the outcome by the parties.[29] With the assistance of an impartial conciliator, parties go through a process of identifying the issues, developing options and considering alternatives with the aim of reaching agreement. The conciliator's role on the content of the dispute may be advisory but is not determinative. Through the process, the conciliator may give advice, make suggestions and encourage parties to reach agreement. If there is no resolution through conciliation, an adjudication process will follow. Conciliation is available for all proceedings in classes 1, 2 and 3 of the LEC's jurisdiction. [30]

Mediation is undertaken with the assistance of an impartial mediator. Through this process parties identify the issues, develop options, consider alternatives and aim to reach agreement. The role of the mediator in terms of the dispute content or resolution outcome has no advisory or determinative role, but they may advise on or determine the process of mediation through which resolution is attempted. Mediation is available for all proceedings in classes 1, 2, 3, 4 and 8 of the LEC's jurisdiction. [31]

Time from lodgment to listing events

The time from lodgment to first listing event, and between subsequent listing events, can provide a good measure of the temporal progress of a case. However, this analysis is also compromised by the transfer to JusticeLink. This is evident from the finding that for the LEC claims that had a listing event recorded on JusticeLink, the average number of days between lodgment of the claim and the first recorded event was 120 days (Table 23). As we have concerns about the reliability of this data we have not reported this information by claim type.[32] The impact of this is temporary only and will reduce over time. As an

[29] Tuor, 2008 http://www.lec.justice.nsw.gov.au/Documents/tuor_epla2008.pdf

[30] LEC Department of Justice 2017 http://www.lec.justice.nsw.gov.au/Pages/resolving_disputes/conciliation.aspx

[31] LEC Department of Justice 2017 http://www.lec.justice.nsw.gov.au/Pages/resolving_disputes/mediation.aspx

[32] Also not reported for the same reason is the profile of first listings recorded and the time from lodgment to first listing by the type of event.

alternative, time from lodgment to first order is presented later in this section, as all order date was transferred in an extractable format.

The average time between events decreases with the increasing number of events: the average time from the first to second listing was 35 days, from second to third listing was 23 days, and from the third to the fourth and the fourth to the fifth (only a quarter – 26.0% – of claims got to this stage) was 19 days.

Table 23: Average number of days between events recorded on JusticeLink for LEC claims

	Lodgment to first listing#	First to second listing	Second to third listing	Third to fourth listing	Fourth to fifth listing
	%	%	%	%	%
Percentage of claims	89.8	77.1	55.9	39.9	26.0
	Days	Days	Days	Days	Days
Planning – not residential#		35	23	18	16
Planning – residential*		35	11	17	11
Planning – other		17	25	17	13
Planning – enforcement		32	23	18	16
Tree disputes		36	33	30	28
Compensation claims		68	30	26	17
Valuation objection		27	11	8	19
Judicial review		32	23	18	8
Miscellaneous		44	24	23	84
Internal appeal		64	43	30	na
All	**120^**	**35**	**23**	**19**	**19**

Source: LEC JusticeLink data on all listing events for claim proceedings in cases recorded as first finalised June–December 2016.
Notes: No internal appeals had more than 4 listing events.
Includes large residential developments such as units and mixed use, and other developments.
* Restricted to small single residential dwelling matters.
^ The high number of days for all LEC claims from lodgment to first recorded listing indicates that not all first listings for cases commenced prior to the transfer to JusticeLink were transferred in a way that enabled their inclusion in the

Interim orders

There is a large number of possible orders for LEC cases, which we have combined for the purpose of reporting (see Table A8, Appendix 2). Table 24 shows the average number of orders for each type of claim. *Valuation objection* claims (2.4) and *Tree disputes* (3.4) had the lowest average number. *Judicial review* (9.2) and *Planning – not residential* (7.5) had the highest average number – explained by a relatively high average number of adjournments in each case. Adjournments of some type are the most common order, with adjournments for mediation/conciliation most frequently used in *Planning – residential* matters (averaging 1.5 per case). The variations in the use of final orders will be explained in part by variation in levels of discontinuance of claims (prior to a final order) by claim type.

Table 24: Average (mean) number of orders per LEC claim

	N	All orders	Final type^	Adjourned - other	Adjourned for mediation/conciliation	Adjourned for hearing	Adjourned for directions	Reserved judgment	Interlocutory	Other order	Case management	Administrative
Planning – not residential#	363	7.5	0.9	3.4	0.7	0.4	0.3	0.2	0.8	0.1	0.0	0.7
Planning – residential*	94	5.7	0.8	1.3	1.5	0.1	0.2	0.2	0.8	0.0	0.0	0.7
Planning – other	86	5.3	0.6	2.0	0.4	0.2	0.6	0.0	0.6	0.0	0.1	0.8
Planning – enforcement	64	5.6	0.9	1.6	0.1	0.5	0.7	0.1	0.7	0.2	0.1	0.6
Tree disputes	70	3.4	0.8	0.9	0.0	1.1	0.0	0.1	0.3	0.1	0.0	0.3
Compensation claims	56	7.1	0.8	3.0	0.3	0.3	0.2	0.1	0.6	0.7	0.2	0.9
Valuation objection	37	2.4	0.1	0.9	0.4	0.0	0.2	0.0	0.1	0.0	0.0	0.8
Judicial review	42	9.2	1.0	3.8	0.0	0.9	0.4	0.5	0.8	0.9	0.1	0.8
Miscellaneous	41	6.9	0.7	3.0	0.2	0.6	0.4	0.3	0.4	0.6	0.1	0.8
Internal appeal	9	4.8	0.8	1.6	0.0	0.9	0.0	0.7	0.6	0.0	0.0	0.3
All	**862**	**6.4**	**0.8**	**2.6**	**0.5**	**0.4**	**0.3**	**0.2**	**0.7**	**0.2**	**0.1**	**0.7**

Source: LEC JusticeLink data on all listing events for claim proceedings from cases recorded as first finalised June–December 2016. Unique orders per claim related case (all case-related proceedings).
Notes: # Includes large residential developments such as units and mixed use, and other developments.
* Restricted to small single residential dwelling matters.
^ Averages are less than 1 because Notice of discontinuance or other methods of finalisation are not included as orders.

Time to first order

Although orders are another way of tracking activity on a case, they are less straightforward as a measure of temporal activity as there can be multiple orders relating to one listing event. However, due to the transfer to JusticeLink the listings data for the LEC is incomplete and therefore gives an incorrect indication of the time to the first activity following lodgment. We have therefore presented here the elapsed time between the lodgment date and the date of the first order in the case (Table 25). The average number of days between lodgment date and first order was lowest for *Planning – residential* claims (41 days) and highest for *Compensation claims* (196 days).

Four orders had dates that preceded the recorded lodgment date of the case. Two of these were orders to access a subpoena, one was a reserved judgment which related to the matter that was now being considered for judicial review, and the fourth was the outcome of the case now under enforcement action. Twenty-two had their first order on the date of claim lodgment. These included applications for injunctions or other interlocutory orders.

Table 25: Elapsed time between LEC claim lodgment date and first order

		Average days	0 to 30 days	31 to 60 days	61 to 180 days	180+ days
	N	Mean	%	%	%	%
Planning – not residential[#]	360	109	33.9	13.9	34.7	17.5
Planning – residential*	93	41	65.6	15.1	17.2	2.2
Planning – other	86	83	39.5	20.9	23.3	16.3
Planning – enforcement	62	160	40.3	14.5	21.0	24.2
Tree disputes	69	48	14.5	63.8	21.7	0.0
Compensation claims	54	196	14.8	14.8	40.7	29.6
Valuation objection	35	154	54.3	5.7	0.0	40.0
Judicial review	41	81	53.7	9.8	24.4	12.2
Miscellaneous	40	193	17.5	25.0	27.5	30.0
Internal appeal	9	67	55.6	0.0	44.4	0.0
All	**849**	**107**	**36.9**	**18.7**	**27.8**	**16.6**

Source: LEC JusticeLink data on all orders from cases recorded as first finalised June–December 2016. All orders, not just those relating to the claim proceeding are included. 9 claims cases had no orders; 4 cases are excluded because their first order date was prior to their lodgment date.
Notes: # Includes large residential developments such as units and mixed use, and other developments.
* Restricted to small single residential dwelling matters.

The progress of tree disputes

Although there are some specific rules regarding the process of a claim within the LEC, there is considerable variability regarding the stages a case will go through and at what point it will finalise. Taking the relatively small, and procedurally simple, example of *Tree disputes* we have mapped out the number and type of listing events that the 70 claims went through prior to first finalising between June and December 2016 (Figure 6). For the purposes of providing a simplified version of the progress of these claims, the figure combines into 'Other event' the listing types of mention and return of subpoena.[33]

[33] Also included is an Online Court request.

Figure 6: The progress of LEC Tree dispute claims recorded as first finalising between June and December 2016 (part 1)

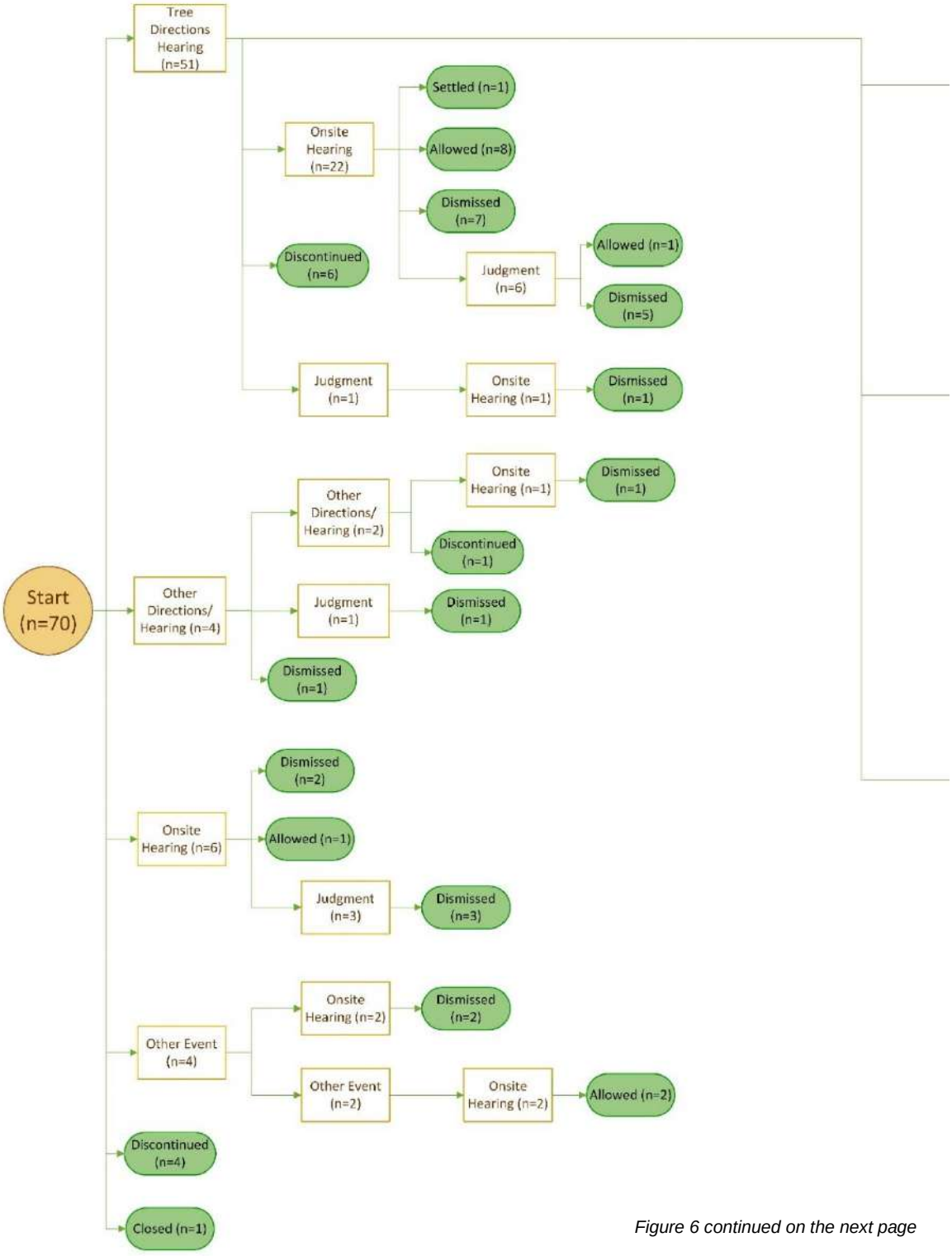
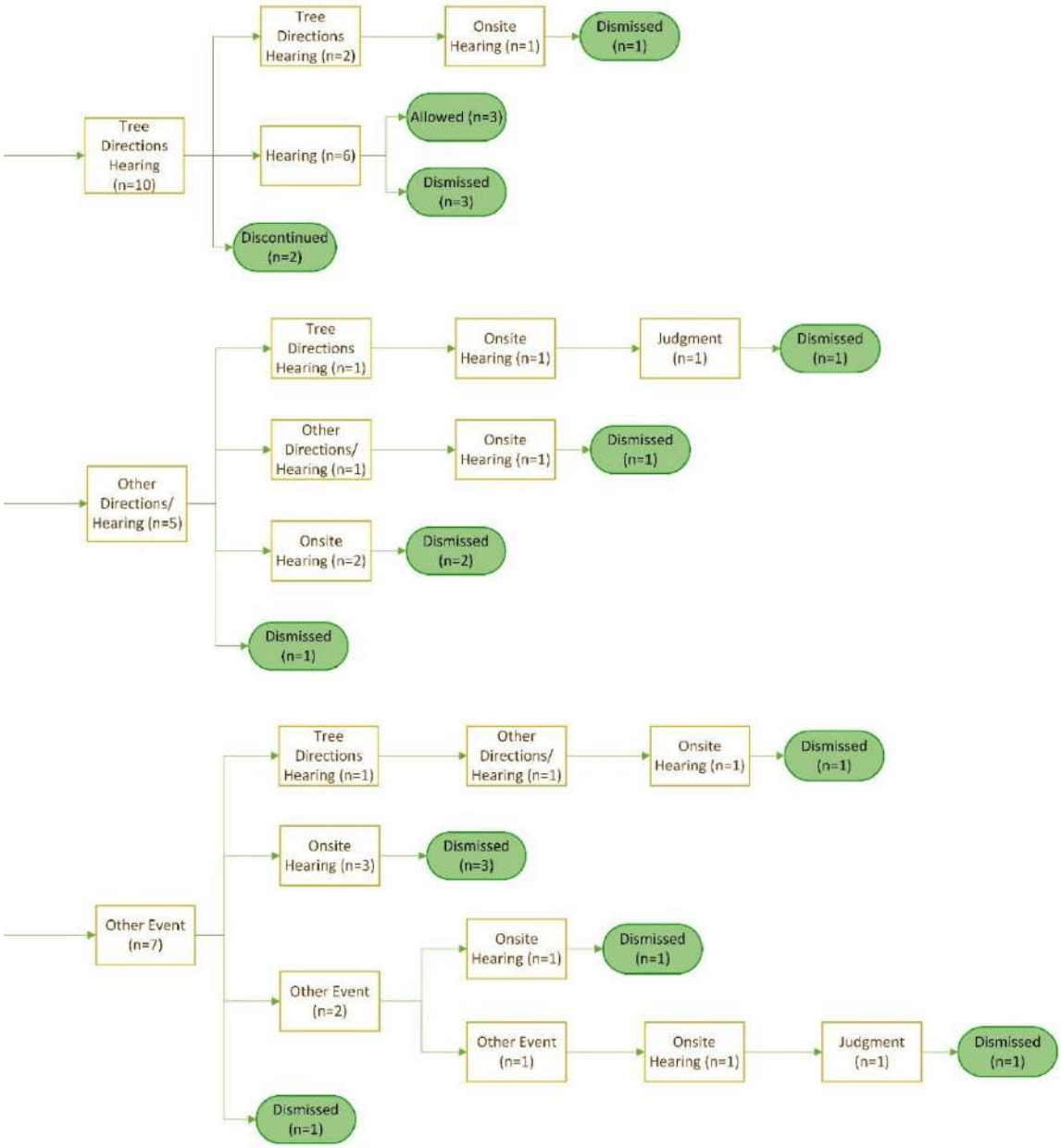


Figure 6 continued on the next page

Figure 6: The progress of LEC Tree dispute claims recorded as first finalising between June and December 2016
(part 2)



See previous page for Part 1 of Figure 6

Improving information about case progression

The current field to capture listings has a large number of options that combine different aspects of the listing including the type of event, where it will occur, who will lead it and what it is about. Ideally these various elements of a listing would be separately captured so that they could more easily be categorised. Doing this would also facilitate using event-based data as a metric for court resource input. Identifying fields that are both useful administratively and analytically will require consultation, but might include separate fields for some or all of:

- the type of event: mediation, conciliation, hearing, return of subpoena etc
- whether the event is a mention
- whether it is an adjourned event or a part-heard event
- who will take that event: e.g. duty judge, list judge, registrar
- where the event will occur: e.g. telephone, onsite, court, registry, council chambers, onsite then court
- what type of claim it relates to (if this is required in addition to the class type).

In addition, some aspects of a case can now progress via Online Court, whereby the parties interact with the LEC via a virtual platform. To determine the impact this has on the progress of cases will require some method of identifying the extent to which this occurred in a case.

8. How are Land and Environment Court claims finalised?

DATA QUALITY – GOOD
Most cases have an order recorded that is of a final order type. Of those that do not, most were either closed administratively or had been deleted (for amendment) but not updated on the system. As in other courts, civil case outcomes can be complex involving multiple orders, orders that refer final decisions to other bodies, and orders that only partially achieve what was sought. Additional flexibility may be required in JusticeLink to adequately capture this. However, relative to other courts, the outcome of cases was very well recorded and informative. To complement administrative data on outcomes, research to explore clients' experience and satisfaction with outcomes is recommended.

An understanding of how civil claims are finalised may be of value to potential applicants and respondents to assist them in making informed decisions regarding the bringing and defending of cases. For instance, they may wish to know the extent to which applicants are 'successful' – that is, whether they get the result they sought (their application is allowed; or they reach a satisfactory settlement) – or 'unsuccessful' (such as, the matter was dismissed; there was a judgment in favour of the other side; or a judgment in their favour, but for a marginal benefit). In practice outcomes can be somewhat more complex, for instance where the applicant achieves only part of what they sought. Furthermore, in a civil court, it is the parties that determine the extent to which the court is involved in finalising a claim and the court is not necessarily informed about outcomes that occur outside of the court process. Administrative data on outcomes would ideally be complemented by research to explore applicants' and respondents' expectations and experiences, and how outcomes are perceived in the context of the dispute resolution service provided by the LEC.

Measuring the outcomes of claims

There are three possible points in time when a LEC civil case could be considered finalised: the date of the *first* outcome (i.e. the first date that an order of a final type was made); the date of the *final* substantive outcome (for those cases that reopen or continue after the first outcome) or the date on which all activity related to the case completes, such as cross-claims and enforcement activity.

From an analytical perspective the first of these is the easiest to capture and measure because it is a certain event: all cases will have a first finalisation. From a court user perspective, however, the first outcome is likely to be less relevant than the final outcome (except where the first outcome is the final outcome). For the court, the case remains on record until all aspects of the case are finalised.

We focus here on identifying the first outcome but note that the data could – with a longer follow-up period – allow subsequent outcomes to be identified too and this may give a more accurate picture of the outcomes achieved for the parties.

Quality of claim outcome data

No one field on JusticeLink captures the outcome of a claim. Information relevant to identifying outcomes is captured in the following data fields:

- finalising status (determined, lapsed or closed)
- order description and date of the order
- documentation filed was a Notice of discontinuance (and the date it was filed)
- the date of first determination of the case.

We were also provided with additional JusticeLink data fields that indicate when JusticeLink was triggered to set a case to 'determined' or that could be used to identify the finalising order.[34] How these relate to the actual outcome of a case is not, however, entirely clear. Box 7 provides an example of a mismatch between the details of a case as recorded on NSW Caselaw[35] and the corresponding data fields in JusticeLink. While this example may be unusual, these kinds of issues do pose a challenge to using the outcome information held in JusticeLink to identify the outcome of a case. We also found a poor match between the dates that cases determined and the outcome dates of orders. We have, therefore, taken our own approach to identifying how and when cases finalised by using the first chronological order of a final type recorded for the claim proceeding and the date this order was recorded as made.

The types of order we have counted as final orders are provided in Table A8, Appendix 2. Injunctions were classified as an interim order, but in one case an injunction was the final outcome for the case within the LEC – the injunction to apply until if/when a statutory body had made a ruling. This case was therefore counted as finalising by way of an 'other final order'.

[34] This field was not provided with the Local Court or District Court data.

[35] https://www.caselaw.nsw.gov.au/

Box 7: Example of mismatch between the events of a case and the data relating to information on outcome held in JusticeLink

A developer appealed against a council's refusal of a development application for a new commercial and residential development. Although some issues were resolved through an amended application, concerns remained in respect of the risk of flooding to the proposed basement car park. The court visited the site and heard from objectors. A hearing took place on 25 and 26 July. On 24 August, the commissioner made directions that the parties file agreed conditions within five days. As they did so, orders were then made on 30 August including that the appeal was upheld.

- in the JusticeLink data, a reserved judgment was recorded as the outcome on 27 July (and the status changed to 'determined').
- on 24 August an order was recorded as a 'judgment given with directions (without final orders)'. This latter order set the field is_finalised_order_type to 'yes'.
- the order type 'upheld/allowed/granted' was created on 2 September, with an outcome date of 30 August.
- the case is recorded as first determined on 2 September.

The following procedure was adopted:

- the full set of possible orders were re-coded into a smaller number of order types (see Table A8, Appendix 2)
- orders of a final type rather than an interim type (e.g. judgment, as opposed to an adjournment) were retained
- unique records on proceeding_number, outcome_date (the date the order applies from) and order_type and order_id were selected (this is necessary to remove duplicate records, for instance where an order is made for one party, and against the other)
- proceedings were sorted to prioritise final type orders and, within final orders, earlier dates
- the first record was then selected, and information on this order was linked to 641 claim proceedings
- 19 proceedings that closed rather than determined were set to a closed outcome (this is a way to close casefiles that were, for instance, opened in error)
- the number of respondents given a discontinuance notice was calculated and linked to the proceeding number
- if there was no final order type and at least one discontinuance notice had been served, then the outcome was set to discontinued
- 6 proceedings had no final order, discontinuance notice or 'closed' outcome.

The small number of claims (6) for which no outcome could be identified in the data were reviewed by reference to the paper casefile and/or the JusticeLink system: 1 had a Notice of discontinuance in the paper file that was not in the JusticeLink data; 2 had transferred to the Supreme Court; and for the remaining 2 it was not possible to identify an outcome. We could not determine why the Notice of discontinuance or the two transfers were not in the data provided.

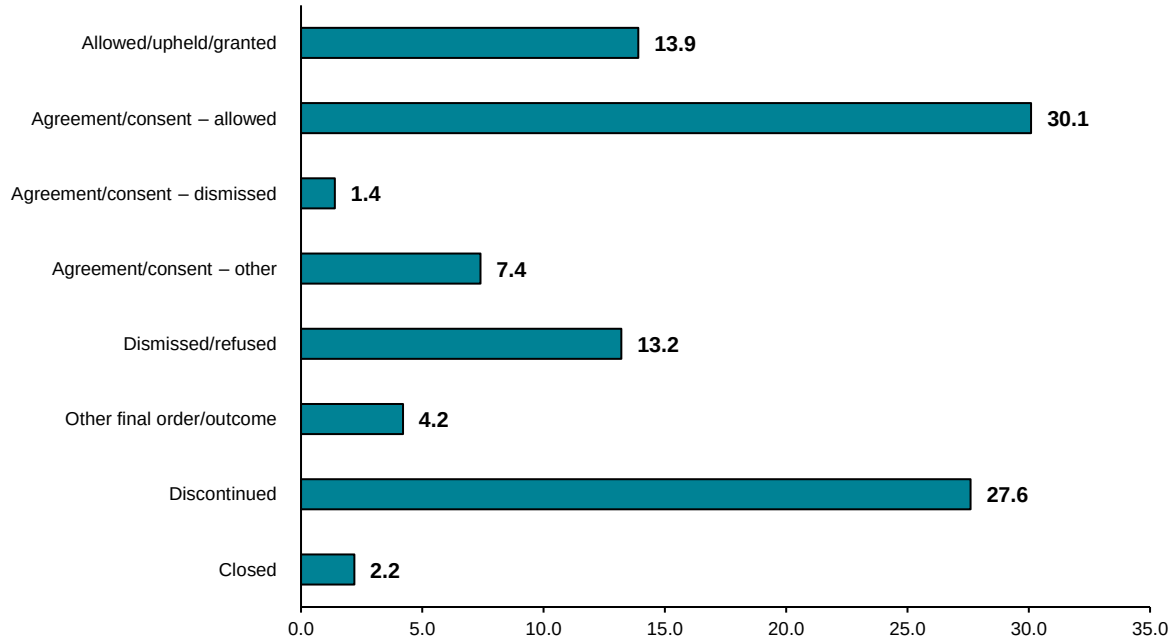
We also noted that some types of outcome were under-counted because the original order/outcome had been struck from the record (although remaining visible on the system). This occurs where an order has been corrected or amended in some way, but no replacement order was entered onto JusticeLink. In our data these are counted under 'other final order/outcome'.

In 21 claim proceedings there were two or more orders of a final type. For analytical purposes, we had to select either the earliest occurring order or to prioritise some outcomes over others. Following a review of some of these claims we opted for prioritisation as a better indication of the final outcome. The impact of this was small, changing the outcome for just 3 claims.[36]

Claim outcomes

Bearing in mind that LEC claim types are diverse and have very different outcome profiles (see below), 13.9% of all LEC claims were allowed/upheld/granted and a further 30.1% were recorded as 'reach agreement to allow' (shown as 'Agreement/consent – allowed' in Figure 7). In total, 38.9% of LEC claims finalised by way of some type of agreement/consent – although 1.4% were an agreement to dismiss. Another 13.2% were dismissed or refused following a contested hearing. The remaining 27.6% were discontinued, with no further information available on whether any form of agreement had been reached.

Figure 7: First final outcome of LEC claims



Source: LEC JusticeLink data on claim proceedings for cases recorded as first finalised June–December 2016.

[36] There were 19 proceedings with 2 final orders and 2 with 3. Most additional orders involved an amendment to the original order – this usually, but not always (perhaps due to the transfer to JusticeLink) post-dated the original order. Others were the outcome relating to an earlier case that was now the subject of the appeal/judicial review.

The profile of claim outcome varies by claim type, in part reflecting that not all outcome types are available for all claim types (Table 26). Some form of agreement was relatively common for planning related matters – accounting for about half of *Planning – not residential*, *Planning – residential* and *Planning – enforcement* outcomes. Just over half (54.3%) of *Tree disputes* were dismissed, 21.4% were allowed and 21.4% were discontinued.[37] *Valuation objection* claims have a very high discontinuance rate which may mask the extent to which the claim has prompted an external resolution of the matter (see Box 8 for an example).

Box 8: Valuation objection claim outcome

A *Valuation objection* claim reviewed as part of the casefile review showed that the claim was discontinued following a consent order between the parties. The consent order detailed that the valuation of the land was confirmed and that the claim be discontinued by all parties.

[37] Of potential relevance here is that there are relatively few barriers to bringing tree disputes to LEC (see Appendix 3, Flow charts: Tree disputes).

Table 26: First final outcome of LEC claims

		Allowed/upheld/ granted	Agreement/consent^ – allowed	Agreement/consent^ – dismissed	Agreement/consent^ – other	Dismissed/ refused	Other final order/ Outcome +	Discontinued	Closed
	N	%	%	%	%	%	%	%	%
Planning – not residential#	363	18.7	49.0	0.0	0.8	10.7	2.2	17.6	0.8
Planning – residential*	94	12.8	50.0	0.0	0.0	9.6	1.1	26.6	0.0
Planning – other	84	9.5	25.0	1.2	4.8	3.6	0.0	56.0	0.0
Planning – enforcement	62	6.5	0.0	1.6	48.4	6.5	16.1	19.4	1.6
Tree disputes	70	21.4	0.0	1.4	0.0	54.3	0.0	21.4	1.4
Compensation claims	56	7.1	21.4	5.4	25.0	0.0	7.1	26.8	7.1
Valuation objection	37	0.0	0.0	0.0	5.4	0.0	0.0	70.3	24.3
Judicial review	42	0.0	0.0	7.1	11.9	33.3	14.3	33.3	0.0
Miscellaneous	39	15.4	0.0	7.7	12.8	7.7	15.4	38.5	2.6
Internal appeal	9	22.2	0.0	0.0	0.0	33.3	11.1	33.3	0.0
All	**856**	**13.9**	**30.1**	**1.4**	**7.4**	**13.2**	**4.2**	**27.6**	**2.2**

Source: LEC JusticeLink data on claim proceedings for cases recorded as first finalised June–December 2016. Where cases had multiple final orders, a prioritisation is made from left to right column, with an Allowed/upheld/granted outcome taking the highest priority. 6 cases had no information in the data on their outcome (casefile analysis shows that 2 had transferred to the Supreme Court; 1 had a Notice of discontinuance on the paper file).
Notes: ^ Agreement/consent includes s. 34A and s. 34AA Agreements.
+ Includes amendments to an original order, where details of that order are not in the JusticeLink data.
# Includes large residential developments such as units and mixed use, and other developments.
* Restricted to small single residential dwelling matters.

Outcome by entity type

Reflecting the types of claims they are involved in as well as other factors, there are variations in claim outcomes for different combinations of applicant and respondent (Table 27). Business entities bringing claims against a government related entity (local council, state government or statutory authority) are the most common applicant/respondent combination in LEC claims. Four in ten (40.2%) of these resulted in 'agreement/consent-allowed', and a further 12.8% resulted in the case being allowed following judgment. The next most common applicant/respondent combination is private individuals bringing claims against a government related entity, and these have a similar outcome profile. Most likely to be discontinued are claims brought by other types of organisations against government related entities (39.7% finalised in this way). The highest rate of dismissal/refusal was for claims brought by private individuals against other individuals (45.8%). Less than one in five (19.4%) of these were allowed following judgment.

Table 27: Main combinations of LEC applicants and respondents by final outcome

		Allowed	Agreement /consent – allowed	Agreement /consent – dismissed	Agreement/consent – other	Dismissed/refused	Discontinued	Other outcome#
	N	%	%	%	%	%	%	%
Business vs Council/Gov/Authority	328	12.8	40.2	0.3	4.0	9.8	25.9	6.7
Other organisation vs Council/Gov/Authority	68	20.6	14.7	2.9	8.8	8.8	39.7	4.4
Individual vs Council/Gov/Authority	303	14.5	38.0	1.0	3.6	10.2	29.4	2.6
Council/Gov/Authority vs business	16	0.0	0.0	0.0	50.0	6.3	25.0	18.8
Council/Gov/Authority vs individual	31	12.9	0.0	0.0	51.6	3.2	19.4	9.7
Individual vs individual	72	19.4	0.0	2.8	4.2	45.8	25.0	1.4
All (including combinations not listed above)	**854**	**13.9**	**30.2**	**1.3**	**7.3**	**12.9**	**27.6**	**6.1**

Source: LEC JusticeLink data on claim proceedings for cases recorded as first finalised June–December 2016. Restricted to LEC JusticeLink data for claims cases with an applicant and a respondent of the types listed in the table. One applicant/respondent per case, in decreasing order of priority: government, business, other organisation, individual. Together the combinations in the table make up 96% of claims cases with both an applicant and respondent (N=818)
Note: # Other outcomes include other final orders and closed administratively. Cases with no outcome are included in the base but not shown in the table

Factors related to outcomes

Many factors determine the outcome of a case, but these factors will overlap. For instance, claims brought by individuals against other individuals were most likely to be dismissed (45.8%), but this will in part reflect that *Tree disputes*, in which this combination of parties is the most common (see Table 16, Section 4), have a dismissal rate of 54.3%. Parties to *Tree disputes* are also less likely to have representation. Exploratory analysis to control for these aspects of a case do indicate that representation of respondents may have some impact on case outcome.[38] However, which cases succeed and which cases fail cannot be predicted from the JusticeLink data alone as outcomes are primarily determined by the strength of the case, which is not captured in data of this type.

[38] As a proxy for the applicant achieving all or some of what they set out to do by bringing a claim, the outcomes of: 'allowed', 'agreement/consent-allowed', 'agreement/consent-other', and 'other final orders' were classified as 'success'. A logistic regression analysis controlling for claim type, applicant/respondent entity categories and number of meeting events, found that where a respondent was legally represented this decreased the probability of a 'successful' outcome for the applicant. Applicant legal representation had no statistically significant impact on this measure.

Improving information about claim outcomes

The quality of data on outcomes is generally good. The only significant issue we identified was if a finalising order was deleted due to amendment/correction, and no revised order was entered, then there was no way to identify how the case had finalised. Either the original order should be retained on the system or a replacement order entered (with the outcome date set to the date of the original order).

Inevitably cases sometimes finalise in a way that doesn't conform with the JusticeLink options. An example was a case recorded as finalising with an injunction, to apply until another body had made a decision. Injunctions are by their nature an interim action so do not trigger JusticeLink to record the case as determining. There are also a few cases that, correctly, have multiple final order types. For this reason, we would recommend consideration of whether JusticeLink's capture of orders can better accord with LEC practice. From an analytical perspective, one option is to include a separate final flag field to allow registry staff to manually record a case as finalised. However, the capture of final orders is not a significant issue for LEC cases as relative to other courts the outcome of cases was very well recorded and informative.

Not measured by administrative data is the participants' satisfaction with their experience and how this compares to other expectations. Even if they do not achieve the outcome they wished for, they may be satisfied with the process.[39] Information of this type could be collected by a survey of the parties to a representative sample of cases.

[39] This has been termed procedural justice. Tyler, TR 2007, 'Procedural justice and the courts', *Court Review*, vol. 44, no. 1/2, pp. 26-164.

9. How long do Land and Environment Court claims take to finalise?

DATA QUALITY – MODERATE
As most cases have either a final order type, or a Notice of discontinuance filed it is feasible, though not straightforward, to calculate the time to this event.
An alternative is to use the time between the JusticeLink dates for case lodged and case finalised. However, the latter currently appears to use the date an order was entered into JusticeLink rather than the date it was made. This should be amended to align with other courts.

Estimates of case length are currently affected by the inclusion of cases that first finalised prior to 2016 but were reopened for some reason, such as making administrative corrections to the original order. This is probably a temporary consequence of the move to JusticeLink.

Information on how long claims take to finalise is an important element for forward planning demand for court resources and may also be relevant information for parties deciding whether to bring or defend a case.

A reliable benchmark of the time cases take is also of value in evaluating the impact of strategies intended to increase the efficiency with which cases are dealt with. However, in addition to court practices and procedures, the length of a case will be affected by the nature of the claim and the activities of the parties, among other factors.

Measuring case length

The length of a case in elapsed time can be calculated from the date of lodgment to the date of finalisation. While our casefile review indicated that lodgment date is well captured, and had been accurately transferred onto JusticeLink for cases commenced prior to June 2016, the date of finalisation is less precise. As discussed in Section 8, cases can have multiple proceedings, with each proceeding having its own conclusion. The case will finalise when all the proceedings within a case have had an event, such as a final order, that sets the proceeding to ‘determined’ in JusticeLink. For various reasons cases can subsequently reopen, such as they were originally closed in error. Of the 862 claims in our data, 10 were open at the time the data extract was taken (May 2017), even though by definition all were from cases that had first finalised between June and December 2016.

The date of case finalisation can vary from the date the final order was made on the substantive claim for a number of reasons, including that other proceedings relating to the

case have not determined, such as a Notice of motion for costs; and, that an agreement has been reached, but the court is awaiting the filing of the relevant documents.

There are, therefore, a number of measures of case length, including:

- time to first final order[40] on the claim proceeding only
- time to case first finalised[41] – i.e. all proceedings have finalised
- time to case completed – i.e. the case does not reopen within a prescribed time.

The first two are certain events that can be determined from the data provided, the third would require a longer follow-up period than was available from our data extract. Therefore, only the first two are presented here.

Quality of data on case length

Our calculation of time to first final order uses the date that a final order was made in a claim proceeding. The time to case first finalised uses the date provided in the JusticeLink dataset. We understand that this is triggered by all proceedings determining/closing. However, it is our assessment that this has utilised the order creation date (i.e. the date the order was entered into JusticeLink) rather than the outcome date (the date the order takes effect).

When did claims commence

Most claims recorded as first finalising between June and December 2016 commenced during 2016 (71.7%). This was the case for all *Tree disputes* and nearly all (95.7%) *Planning – residential* claims. *Planning – enforcement*, *Compensation claims* and other *Miscellaneous* matters included claims with the longest histories (Table 28).

The casefiles for ten cases that we identified as first finalised prior to 2016 were reviewed. These indicated that the earlier date was correct, and that the inclusion of these cases in our sample was an anomaly due to the transfer to JusticeLink, whereby cases that had reopened (e.g. for amendment of the original order, an enforcement action, or actions relating to costs) were recorded as first finalising after the transfer. The impact of this on any future analysis will decline over time.

[40] The first final order is the earliest date that a final type order was made (as recorded on JusticeLink) for the claim proceeding.

[41] The first finalised date is the date recorded in JusticeLink as the date on which the case first finalised. A case will finalise when an order has been made for each proceeding within a case of a type that will set the proceeding to a determined status.

Table 28: Year of lodgment for LEC claims

		2016	2015	2014 or earlier
	N	%	%	%
Planning – not residential[#]	363	66.9	30.3	2.8
Planning – residential*	94	95.7	4.3	0.0
Planning – other	86	79.1	20.9	0.0
Planning – enforcement	64	59.4	25.0	15.6
Tree disputes	70	100.0	0.0	0.0
Compensation claims	56	50.0	39.3	10.7
Valuation objection	37	62.2	35.1	2.7
Judicial review	42	71.4	26.2	2.4
Miscellaneous	41	51.2	34.1	14.6
Internal appeal	9	77.8	22.2	0.0
All	**862**	**71.7**	**24.4**	**3.9**

Source: LEC JusticeLink data on claim proceedings for cases recorded as first finalised June–December 2016.
Notes: # Includes large residential developments such as units and mixed use, and other developments.
* Restricted to small single residential dwelling matters.

Time to finalisation by claim type

The average time from lodgment to the first date that a final order is made or the case discontinues is 193 days (28 weeks) as shown in Table 29. *Tree disputes* are the quickest to reach a first outcome, taking 103 days (15 weeks) on average, closely followed by *Planning – residential* at 110 days (16 weeks). For the most part, these claims finalise at this point, as the time to case finalisation is on average only 2 and 4 days longer respectively. This probably just reflects the time taken to enter details of the order into JusticeLink – as noted, the case finalisation date uses this date, rather than the date the order was made. The average time from lodgment to first final order is longest for *Miscellaneous* claims at 328 days (47 weeks) and *Compensation claims* at 315 days (45 weeks).

Claims with the longest period between the first final order date and the date the case was recorded as first finalised were *Planning – enforcement* matters. Some of these were cases that had originally finalised prior to transfer to JusticeLink but where the enforcement activity had required the case to be reopened. Notices of motion regarding claims for costs were a common reason for cases not finalising at the time of the first final order.[42]

[42] For analytical purposes, where no final order was recorded, but a Notice of discontinuance was filed in relation to at least one respondent, we have recorded the case has finalised by discontinuance at the date of the notice. However, in practice we noted that some of these cases continued against other respondents – though the final outcome is unknown. As respondents can have multiple entity_id (as an individual or an organisation), but the notice is only recorded against one of these, there is no easy method to identify whether or not all respondents have had the case against them discontinued.

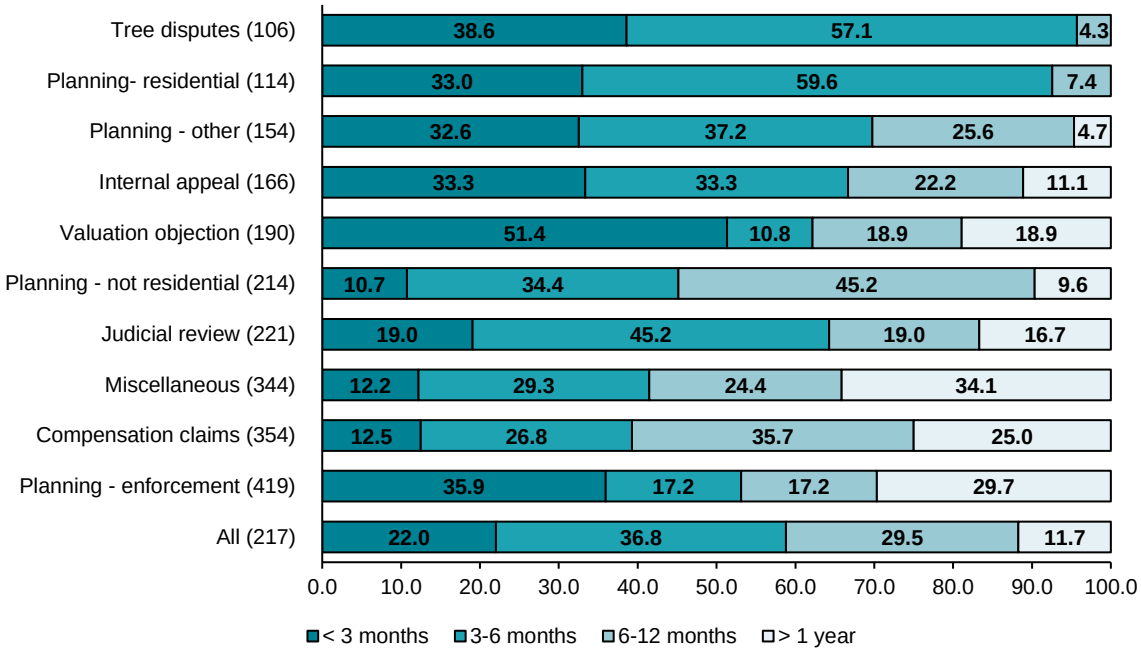
Table 29: Average time in days (and weeks) from LEC claim lodgment to first final order date and to case finalisation date

		Average number of days (weeks) from lodgment date to:	
		First final order date or date Notice of discontinuance lodged ^	Case finalisation date+
	N	Mean days (weeks)	Mean days (weeks)
Planning – not residential#	360	209 (30)	214 (31)
Planning – residential*	94	111 (16)	114 (16)
Planning – other	84	148 (21)	154 (22)
Planning – enforcement	61	199 (28)	419 (60)
Tree disputes	69	103 (15)	106 (15)
Compensation claims	52	315 (45)	354 (51)
Valuation objection	28	190 (27)	190 (27)
Judicial review	42	204 (29)	221 (32)
Miscellaneous	38	328 (47)	344 (49)
Internal appeal	9	164 (23)	166 (24)
All	**837**	**193 (28)**	**217 (31)**

Source: LEC JusticeLink data on claim proceedings for cases recorded as first finalised June–December 2016.
Notes: 6 cases had no final order recorded and 19 were closed administratively and are excluded from this analysis.
Includes large residential developments such as units and mixed use, and other developments.
* Restricted to small single residential dwelling matters.
^ The first final order date is calculated from the outcome date of the first final order on the claim proceeding only.
+ The case finalisation date is the date provided in the JusticeLink dataset as the date the case first finalised. A case does not finalise until all proceedings have finalised. This data has been affected by the move to JusticeLink.

Within these average lengths there is considerable variability (Figure 8). Although *Planning – enforcement* had the longest average length, over a third (35.9%) completed within 3 months. Over half (51.4%) of *Valuation objection* claims completed within 3 months, although nearly a fifth (18.9%) took more than a year to close. *Tree disputes* had the shortest average length, with only 4.3% taking more than six months.

Figure 8: Time from LEC claim lodgment to case first closed (average number of days in brackets)



Source: LEC JusticeLink data on claim proceedings for cases recorded as first finalised June–December 2016.

Time to finalisation by outcome

On average, claims that were discontinued completed in the shortest time, averaging 134 days (19 weeks) (Table 30). The longest cases were those that were dismissed by agreement averaging 492 days – however, this figure is based on only 12 claims so should be treated with caution. 'Other final orders/outcomes' also had a long length averaging 386 days, but these include later amending orders, where the type and date of the original order was no longer available from the JusticeLink data.

Table 30: Average time in days (and weeks) to first final order and LEC case finalisation

		First final order date or date Notice of discontinuance lodged#	Case finalisation date*
	N	Mean days (weeks)	Mean days (weeks)
Allowed/upheld/granted	119	295 (42)	310 (44)
Agreement/consent – allowed	258	170 (24)	178 (25)
Agreement/consent – dismissed	12	492 (70)	493 (70)
Agreement/consent – other	63	176 (25)	235 (34)
Dismissed/refused	113	177 (25)	186 (27)
Other final order/outcome	36	386 (55)	692 (99)
Discontinued	236	134 (19)	135 (19)
Total	**837**	**193 (28)**	**217 (31)**

Source: LEC JusticeLink data on claim proceedings for cases recorded as first finalised June–December 2016.
Notes: 6 claims had no final order recorded and 19 were closed administratively and are excluded from this analysis.
The first final order date is calculated from the outcome date of the first final order on the claim proceeding only
* The case finalisation date is the date provided in the JusticeLink dataset as the date the case first finalised. A case does not finalise until all proceedings have finalised. This data has been affected by the move to JusticeLink.

Factors related to elapsed case length

The time a case takes from lodgment to finalisation will be affected by many factors. These are not necessarily within the control of the LEC and/or measured by the information captured on JusticeLink. As some of the factors measured by JusticeLink covary (e.g. legal representation rates are higher for some party types which are in turn more common in some claim types) it is necessary to use an analytical technique that can control for this to identify whether each factor has an impact independent of the other factors.[43] Exploratory analysis of the time cases take from lodgment to finalisation indicates that, controlling for claim type and party type, adjournments and judgments were related to increased case length, whereas mediation/conciliation shortened case length. Other factors that on first

[43] A multiple regression was used to model the relationship between the dependent variable of days from lodgment to claim finalisation, and the following independent variables: claim types, entity types, listing types, legal representation and successful outcome for the applicant. This technique identifies the impact of each of the independent variables on the dependent variable, when the other independent variables are held constant. Overall the model explained 23% of the variance which is moderate – and indicates that most of the explanation of case length will be accounted for by other factors.

analysis appeared to increase case length (independent of other factors), were the outcome being in the applicant's favour and the respondent having legal representation.[44]

Improving information on claim duration

As LEC cases generally have one claim proceeding and associated Notices of motion, the case length (which uses the date by which all proceedings are finalised) is usually equivalent to the claim length (which uses the date on which the substantive claim proceeding finalises). The date that a case finalises is recorded on JusticeLink, so information on case length should be readily accessible. However, this date should be reviewed to ensure it is utilising the order outcome date, rather than the date the order is entered in the system. Also, where final orders are amended for administrative reasons, for instance to correct an error, a more accurate representation of case length would be provided by retaining the date of the original order as the date of finalisation in JusticeLink.

[44] This analysis should be repeated on later samples of cases, in particular those that were lodged after the transfer to JusticeLink, to confirm the findings.

Appendix 1: Methodology

Two sources of data were used in the analysis for this report. These were:

1. Administrative data from the LEC's management information system:
   - data on all civil cases finalised for the first time between June and December 2016. This was provided by Court Services NSW from data tables they extract from JusticeLink, the NSW Courts management information system[45]
   - data on all participants in the above cases for entity coding
2. samples of hard copy paper files of cases for the case file analysis.

Further details are described below.

JusticeLink data tables

Court Services NSW provided data to the Foundation in a set of Excel spreadsheets, each covering different aspects of the data held in JusticeLink. These datasets could be linked via common keys, in particular proceeding_number, entity_id and order_id.

Table M1: LEC proceedings for cases finalising for first time between June and December 2016

	Number of proceedings
Civil proceeding claims	862
Notice of motion civil	211
Notice of motion crime	1
All	**1,074**

Source: LEC JusticeLink data for all proceedings of cases recorded as first finalised June–December 2016.

The Foundation imported these datasets into SPSS, a proprietary statistical software package. For the case-based analysis only claim-related proceedings were retained. In the small number of cases where there was more than one claim-related proceeding within a case, the first proceeding was retained. Variables or fields from other datasets were attached to the cases data.

A separate dataset including all applicants and respondents was constructed for entity-based analysis. This deleted duplicate records for entities where these related to an additional legal representative being associated with the entity. It was assumed an entity had legal representation if there were any details entered for a legal representative for that entity.

[45] The annual rate should not be extrapolated from the numbers provided in this report, partly due to any underlying seasonality or trends in the number of cases lodged, but also because the count may be an over-count as it appears to include cases that first determined and reopened prior to June 2016. Thus the first determined date subsequently captured on JusticeLink (and used for our data extract) is later than the first outcome event.

Entity coding

Coding was undertaken separately on applicants and respondents. An initial set of 33 codes was collapsed into summarised lists of 21 categories and 6 broad categories for reporting purposes.

Casefile samples

A casefile analysis (paper and/or on the management information system as required) was undertaken of 121 casefiles, to investigate any systematic limitations in the data recorded on JusticeLink relevant to the key questions addressed. Key data points examined and recorded on an Access database were:

- class type
- claim type
- number of mediations
- hearing attendance by applicant and respondent
- fees recorded on paper and JusticeLink
- applicant and respondent representation
- details of application
- orders sought
- primary order/outcome
- date of order
- other orders/outcomes
- dates of other orders/outcomes
- any costs orders.

Focusing on these variables, we 'audited' the reliability of information recorded on JusticeLink and gathered information that was missing or not appropriately detailed in JusticeLink (e.g. subcategories of case types under 'Mercantile – other').

The following samples were used:

- selected proceedings from range of classes
- Notice of motion proceedings
- cases with multiple final orders
- cases with 'other' final order
- cases with the final order on determined date = adjourned
- cases with the final order on determined date = vacate listing
- cases with the final order on determined date = case management
- closed cases
- cases with defence filed
- Notice of discontinuance filed against blank
- case with three proceedings started on the same day
- applicants not represented during case
- respondents not represented during case
- case has no orders at all

- case has no first proceeding
- no finalisation trigger for case
- more statute coverage.

The research team were provided access to a JusticeLink terminal at the LEC registry.

Appendix 2: Tables

Table A1: How LEC claims commenced

	N	Class 1,2,3 application	Tree dispute application	Summons	Statement of claim
Planning – not residential	363	363	0	0	0
Planning – residential	94	94	0	0	0
Planning – other	86	86	0	0	0
Planning – enforcement	64	0	0	61	3
Tree disputes	70	0	70	0	0
Compensation claims	56	56	0	0	0
Valuation objection	37	37	0	0	0
Judicial review	42	0	0	39	3
Miscellaneous	41	29	0	9	3
Internal appeal	9	0	0	9	0
All	**862**	**665**	**70**	**118**	**9**

Source: LEC JusticeLink data on claim proceedings for cases recorded as first finalised June–December 2016.

Table A2: LEC classification of case type into class type

LEC case type	No. of cases
Class 1 - Development Appeal	363
Environmental Planning and Assessment Act 1979 - s. 97 Appeal against the deemed refusal of a development application	182
Environmental Planning and Assessment Act 1979 - s. 97 Appeal against the actual refusal of a development application	112
Environmental Planning and Assessment Act 1979 - s. 97AA Appeal against the deemed refusal of an application to modify a development consent	26
Environmental Planning and Assessment Act 1979 - s. 97AA Appeal against the actual refusal of an application to modify a development consent	15
Environmental Planning and Assessment Act 1979 - s. 96(8) Application to the Court to modify a development consent granted by the Court	9
Environmental Planning and Assessment Act 1979 - s. 98 Appeal by an objector against outcome of a development application for designated development	7
Environmental Planning and Assessment Act 1979 - s. 96A Appeal against the revocation or modification of development consent by Secretary or council	6
Environmental Planning and Assessment Act 1979 - s. 97 Appeal against the conditions of consent imposed upon a development consent	4

LEC case type	No. of cases
Environmental Planning and Assessment Act 1979 - s. 97(3) Appeal against a condition of deferred commencement imposed upon a development consent	1
Environmental Planning and Assessment Act 1979 - s. 97AA Appeal against conditions of consent or terms of approval of modification application	1
2 Class 1 - Miscellaneous Appeal	86
Environmental Planning and Assessment Act 1979 - s. 121ZK Appeal against an order issued under s. 121B of the Act	58
Environmental Planning and Assessment Act 1979 - s. 149F Appeal against refusal of a building certificate application	9
Environmental Planning and Assessment Act 1979 - s. 149F Appeal against deemed refusal or failure to issue a building certificate	4
Protection of the Environment Operations Act 1997 - s. 287 Appeal against decision concerning or refusal of an environmental protection licence	4
Heritage Act 1977 - s. 30 Appeal against interim heritage order	3
Protection of the Environment Operations Act 1997 - s. 289 Appeal against a prevention notice or variation of a prevention notice	2
Water Management Act 2000 - s. 368(1)(h) Appeal by objector against the grant of a designated water use/management approval	2
Environmental Planning and Assessment Act 1979 - s. 109K Appeal against deemed refusal of or failure to issue a construction certificate	1
Environmental Planning and Assessment Act 1979 - s. 109K Appeal against deemed refusal of or failure to issue an occupation certificate	1
Environmental Planning and Assessment Act 1979 - s. 109K Appeal against deemed refusal of or failure to issue a subdivision certificate	1
Protection of the Environment Operations Act 1997 - Other Appeal (Part 9.2)	1
3 Class 1 - Residential Development Appeal	94
Environmental Planning and Assessment Act 1979 - s. 97 Appeal against the deemed refusal of a development application -residential	42
Environmental Planning and Assessment Act 1979 - s. 97 Appeal against the actual refusal of a development application -residential	26
Environmental Planning and Assessment Act 1979 - s. 97AA Appeal against actual refusal of an application to modify development consent -residential	10
Environmental Planning and Assessment Act 1979 - s. 97AA Appeal against deemed refusal of an application to modify development consent -residential	9
Environmental Planning and Assessment Act 1979 - s. 97 Appeal against the conditions of consent imposed on a development consent -residential	3
Environmental Planning and Assessment Act 1979 - s. 97AA Appeal against conditions of consent or terms of approval of modification application - residential	3
Environmental Planning and Assessment Act 1979 - s. 97(3) Appeal against a deferred commencement condition imposed on a consent -residential	1
4 Class 1 - s. 56A Appeal	8

LEC case type	No. of cases
Land and Environment Court Act 1979 - s. 56A Appeal against a Commissioner's decision	8
5 Class 2 - Miscellaneous Appeal	10
Local Government Act 1993 - s. 180 Appeal against an order issued by the council under the Act	6
Swimming Pools Act 1992 - s. 26(1)(a) Appeal against refusal to grant a s. 22 exemption	2
Local Government Act 1993 - s. 611(4) Appeal against amount of annual charge for having rails, pipes, wires, poles etc on public places	1
Strata Schemes (Freehold Development) Act - s. 28QA Application to defer conclusion or fix a time for conclusion of a strata development scheme	1
6 Class 2 - s. 56A Appeal	1
Land and Environment Court Act 1979 - s. 56A Appeal against a Commissioner's decision	1
7 Class 2 - Tree Dispute Application	70
Pt2 - Prevent/Rectify Property Damage & Risk of Injury	15
Pt2 - All grounds - Compensation, Prevent/Rectify Property Damage & Risk of Injury	12
Pt2 - Prevent/Rectify Property Damage only	12
Pt2A - Obstruct View only	9
Pt2A - Obstruct Sunlight only	6
Pt2A - Obstruct Sunlight & Obstruct View	5
Pt2 - Compensation & Prevent/Rectify Property Damage	4
Pt2 - Risk of Injury only	2
Pt2 & Pt2A - Pt2 Compensation, Prevent/Rectify Property Damage & Pt2A Obstruct Sunlight	2
Pt2 - Compensation & Risk of Injury	1
Pt2 & Pt2A - Pt2 Compensation & Pt2A Obstruct View	1
Pt2 & Pt2A - Pt2 Prevent/Rectify Property Damage & Pt2A Obstruct Sunlight	1
8 Class 3 - Aboriginal Land Claim	9
Aboriginal Land Rights Act 1983 - s. 36(6), (7) Appeal by an Aboriginal Land Council against refusal of a land claim by the Crown Lands Minister	9
9 Class 3 - Compensation Claim	56
Land Acq (Just terms Comp) Act - s. 66 Objection to the amount of compensation offered for compulsory acquisition of land	56
10 Class 3 - Miscellaneous Appeal	10
Land and Environment Court Act 1979 - s. 40 Application for Easement (including s. 88K Conveyancing Act)	4
Encroachment of Buildings Act 1922 - Application for relief under the Act regarding an encroachment	2
Land and Environment Court Act 1979 - s. 19(h) Miscellaneous appeals or applications	2
Local Government Act 1993 - s. 181 Application for compensation for a Local Government order where order unreasonable or unsubstantiated	1

LEC case type	No. of cases
Local Government Act 1993 - s. 574 Appeal against rates and charges notice on whether land is rateable or subject to a charge	1
11 Class 3 - Valuation Objection	37
Valuation of Land Act 1916 - s. 37(1) Appeal against the Valuer General's determination of an objection to the value of land	37
12 Class 4 - Civil Enforcement	64
Environmental Planning and Assessment Act 1979 - s. 123 Application for order to remedy/restrain breach of Act (by injunction or otherwise)	45
Local Government Act 1993 - s. 673 Application by Minister/Secretary/Council to remedy/restrain breach of Act (by injunction or otherwise)	4
Local Government Act 1993 - Other application to enforce (by injunction or otherwise) any right, obligation or duty under the Act	4
Environmental Planning and Assessment Act 1979 - Other application to enforce (by injunction or otherwise) any right, obligation or duty conferred or imposed by the Act	2
Local Government Act 1993 - Application to enforce right, obligation or duty concerning regulatory functions under Ch7 of Act	2
Environmental Planning and Assessment Act 1979 (Planning Instrument) - Application to enforce (by injunction or otherwise) a right, obligation or duty under the planning instrument	1
Local Government Act 1993 - s. 674 Application for orders to remedy/restrain breach of Act (by injunction or otherwise)	1
Local Government Act 1993 - Application to enforce right/obligation RE classification of public land or use of community land (Ch2 Pt6)	1
National Parks and Wildlife Act 1974 - s. 193 Application for orders to remedy/restrain breach of Act (by injunction or otherwise)	1
Native Vegetation Act 2003 - s. 41 Application for orders to remedy/restrain breach of Act (by injunction or otherwise)	1
Protection of the Environment Operations Act 1997 - Other application to enforce (by injunction or otherwise) any right, obligation or duty under the Act	1
Protection of the Environment Operations Act 1997 - s. 252 Application for orders to remedy/restrain breach of Act (by injunction or otherwise) (Part 8.4)	1
13 Class 4 - Judicial Review	42
Environmental Planning and Assessment Act 1979 - s. 123 Application for order to remedy/restrain breach of Act (by way of judicial review)	22
Environmental Planning and Assessment Act 1979 - Review of a decision to grant development consent	8
Local Government Act 1993 - Other application to review a decision on, or command, the exercise of a function under the Act	5
Aboriginal Land Rights Act 1983 - Other Application to review a decision on, or command, the exercise of a function under the Act	2
Environmental Planning and Assessment Act 1979 - Other application to review a decision on, or command, the exercise of a function under the Act	2

LEC case type	No. of cases
Contaminated Land Management Act 1997 - Application to review a decision on, or command, the exercise of a function under the Act	1
Protection of the Environment Operations Act 1997 - s. 252 Application to remedy/restrain breach of Act (by way of judicial review) (Part 8.4)	1
Threatened Species Conservation Act 1995 - s. 141F Application to remedy/restrain breach of Act or regulations (by judicial review)	1
14 Class 4 - Transfer	3
Civil Procedure Act 2005 - s. 149B Transfer of proceedings to the Court by order of the Supreme Court	3
15 Class 8 - Mining	7
Mining Act 1992 - s. 155 Review Arbitrator determination of access arrangements	3
Mining Act 1992 - s. 128 Appeal cancellation or compensation for cancellation of exploration licence, assessment lease or mining lease	1
Mining Act 1992 - s. 265 Application to assess compensation under mining lease	1
Mining Act 1992 - s. 293(1)(q) Appeal refusal or cancellation of exploration licence, assessment lease or mining lease	1
Mining Act 1992 - s. 31 Dispute use of exploration licence near dwelling, garden or improvement	1
16 Class 8 - Mining - Small Scale Title	2
Mining Act 1992 - s. 236C/S236G Application for access management plan	1
Mining Act 1992 - s. 293(1)(f) Claim for debt or damages (mineral claim or opal prospecting licence)	1
All cases	**862**

Source: LEC JusticeLink data on claim proceedings for cases recorded as first finalised June–December 2016.

Table A3: Percentage of LEC applicants and respondents recorded on JusticeLink as individuals and organisations

				Applicants		Respondents	
				Individual	Organisation	Individual	Organisation
	N		N	%	%	%	%
Planning – not residential	385	/	373	34.0	66.0	0.3	99.7
Planning – residential	111	/	94	82.0	18.0	0.0	100.0
Planning – other	115	/	88	71.3	28.7	2.3	97.7
Planning – enforcement	67	/	115	13.4	86.6	63.5	36.5
Tree disputes	88	/	98	96.6	3.4	94.9	5.1
Compensation claims	77	/	55	64.9	35.1	0.0	100.0
Valuation objection	39	/	36	7.7	92.3	2.8	97.2
Judicial review	50	/	125	38.0	62.0	23.2	76.8
Miscellaneous	65	/	54	70.8	29.2	24.1	75.9
Internal appeal	9	/	10	33.3	66.7	0.0	100.0
All	**1,006**	**/**	**1,048**	**51.6**	**48.4**	**20.2**	**79.8**

Source: LEC JusticeLink data on participants in claim proceedings for cases recorded as first finalised June–December 2016.

Table A4: Percentage of applicants and respondents with representation in LEC claims

			Applicants	Respondents
	N	N	%	%
Planning – not residential	385	373	95.3	96.8
Planning – residential	111	94	93.7	95.7
Planning – other	115	88	94.8	88.6
Planning – enforcement	67	115	89.6	61.7
Tree disputes	88	98	29.5	33.7
Compensation claims	77	55	97.4	96.4
Valuation objection	39	36	92.3	88.9
Judicial review	50	125	92.0	72.0
Miscellaneous	65	54	87.7	87.0
Internal appeal	9	10	88.9	90.0
All	**1,006**	**1,048**	**88.3**	**82.4**

Source: LEC JusticeLink data on participants in claim proceedings for cases recorded as first finalised June–December 2016. .

Notes: An applicant / respondent is counted as represented if any legal representative details are recorded for any proceeding within their case, whatever the duration of the legal representation.

Table A5: Percentage of LEC claim proceedings in which the applicant or respondent was represented

		Applicants	Respondents
	N	%	%
Planning – not residential	363	95.6	97.5
Planning – residential	94	92.6	95.7
Planning – other	86	94.2	89.5
Planning – enforcement	64	87.5	64.1
Tree disputes	70	30.0	30.0
Compensation claims	56	96.4	94.6
Valuation objection	37	91.9	86.5
Judicial review	42	92.9	83.3
Miscellaneous	41	85.4	87.8
Internal appeal	9	88.9	88.9
All	**862**	**88.4**	**86.7**

Source: LEC JusticeLink data on participants in claim proceedings for cases recorded as first finalised June–December 2016.
Notes: An applicant / respondent is counted as represented if any legal representative details are recorded for any proceeding within their case, whatever the duration of the legal representation.

Table A6: Representation of parties in LEC claims by entity type

Entity type	Applicants		Respondents	
	N	%	N	%
Individual	517	80.9	210	46.7
Local council	56	92.9	595	95.1
NSW Government	1	100.0	94	84.0
Ind. statutory authority	2	100.0	51	84.3
Business	344	97.4	69	84.1
Other	85	94.1	28	71.4
All	**1,005**	**88.4**	**1,047**	**82.5**

Source: LEC JusticeLink data: LJF coding of entity type of participants in claim proceedings for cases recorded as first finalised June–December 2016.

Table A7: LJF grouping of LEC listing types

LJF groups of listing types	LEC listing types
Directions hearing/ directions	Class 3 Directions Hearing, Class 4 Directions Hearing, Class 8 Directions Hearing - By Telephone, Directions, Directions Hearing, Pre-Trial Directions, Pre-trial Mention, Registrar Directions Hearing, Registrar Directions Hearing - Residential Development Appeals, Registrar Telephone Directions Hearing.
Adjourned hearing/ conciliation/ mediation	Adjourned Mediation, Adjourned Mediation - By Telephone, Adjourned Mediation - for Telephone Mention, Adjourned s. 34 Conciliation Conference, Adjourned s. 34 Conciliation Conference - By Telephone, Adjourned s. 34 Conciliation Conference - for Mention, Adjourned s. 34 Conciliation Conference - for Telephone Mention, Adjourned s. 34AA Conciliation, Adjourned s. 34AA Conciliation - By Telephone, Adjourned s. 34AA Conciliation - for Mention, Adjourned s. 34AA Conciliation - for Telephone Mention, Adjourned s. 34AA Hearing.
Hearing/consent order hearing	Hearing, Court Hearing (at 11:30am) commencing with onsite view, Court Hearing (at 12noon) commencing with onsite view, Court Hearing (at 2:30pm) commencing with onsite view, Hearing, Hearing on Separate Question, Hearing View, Interlocutory Hearing, Onsite Hearing, Part Heard Hearing, s. 34(4)(b) Hearing.
Conciliation conference/mediation	Mediation, s. 34 Conciliation Conference, s. 34 Conciliation Conference Onsite then back to Council Chambers, s. 34 Conference Onsite then back to Court, s. 34AA Conciliation and Hearing.
Tree directions hearing[1]	Tree Directions Conference Tree Directions Conference - By Telephone
Judgment	Judgment Judgment - By Telephone.

LJF groups of listing types	LEC listing types
Return of subpoena	Return of Subpoena
Online Court	eCourt - Response required, and Online Court - Request required.
Misc. listings	Case Management Conference, Costs Hearing, Duty Commissioner (Duty Judge) Land Valuation and Compensation List (List Judge) Notice of motion (Duty Judge) Notice of motion (List Judge) Notice of motion Hearing Notice of motion List (Registrar) Notice to Produce List and Onsite View
Mention	Mention Pre-trial Mention and Telephone mention

Source: LEC JusticeLink data on claim proceedings for cases recorded as first finalised June–December 2016
Notes: [1] LEC has advised that these events are directions hearings specific to tree matters.

Table A8: LJF categorisation of LEC order types

LJF category	JusticeLink order type
Final type order	
Allowed/upheld/granted	Upheld/Allowed/Granted >
	Tree Application Granted - Tree orders only (including removal, pruning, maintenance) >
	Appeal Upheld/Allowed/Granted >
	Proceeded to hearing phase - Judgment - Appeal upheld >
	Proceeded to s. 34(4)(b) hearing - Judgment - Allowed/granted/upheld >
	Tree Application Granted - Compensation and Rectification>
	Tree Application Granted - Compensation and Tree orders (including removal, pruning, maintenance) >
Agreement/consent – allowed	s34 Agreement - Allowed/Upheld/Granted >
	s34AA Agreement - Appeal Allowed/Upheld >
Agreement/consent – dismissed	Proceedings dismissed by consent >
	s34 Agreement - Refused/Dismissed >
Agreement/consent – other	Other consent orders made - in court >
	Other consent orders made - in chambers >
	s34 Agreement - Other >
	Agreement reached - adjourned for consent orders
	s34AA Agreement - Other (misc) >
Discontinued	Notice of discontinuance filed in court >
Dismissed/refused	Refused/Dismissed >

LJF category	JusticeLink order type
	Tree Application Dismissed/Refused >
	Hedge Application Dismissed/Refused >
	Appeal Refused/Dismissed >
	Proceeded to hearing phase - Judgment - Appeal dismissed >
	Proceedings otherwise dismissed >
	Proceedings dismissed pursuant to Rule 13.6 >
Other final order/outcome	Other final orders made >
	Other amending orders - proceedings finalised >
	Slip rule amendment made
Not final order	
Adjourned other	Adjourned/Relisted
	Adjourned
	Conference adjourned
	Adjourned for Online Court request
	Adjourned generally (no future date)
	Conference terminated >
	Adjourned for Case Management Conference
	Adjourned for eCourt response
	Mediation adjourned
	Mediation terminated (no agreement)
	Adjourned - (Multi Day Listing)
Adjourned for mediation/conciliation	Adjourned for s. 34 Conciliation Conference (Class 1 DA Directions) >
	Adjourned for s. 34AA Conciliation and Hearing (Class 1 RDA directions) >
	Adjourned in Conciliation Phase
	Adjourned for s. 34 Conciliation Conference (Class 1-3 Misc Directions) >
	Adjourned for s. 34 Conciliation Conference (Class 3 Compensation Directions) >
	Adjourned for s. 34 Conciliation Conference (Class 3 Valuation Directions) >
	Adjourned for mediation
Adjourned for hearing	Adjourned for hearing (Class 1 DA Directions) >
	Adjourned for hearing - Directions (Trees) >
	Adjourned for hearing (directions)
	Adjourned for hearing (Class 1-3 Misc Directions) >
	Adjourned for hearing (Class 4 Judicial Review Directions) >
	Adjourned for hearing (Class 4 Directions) >

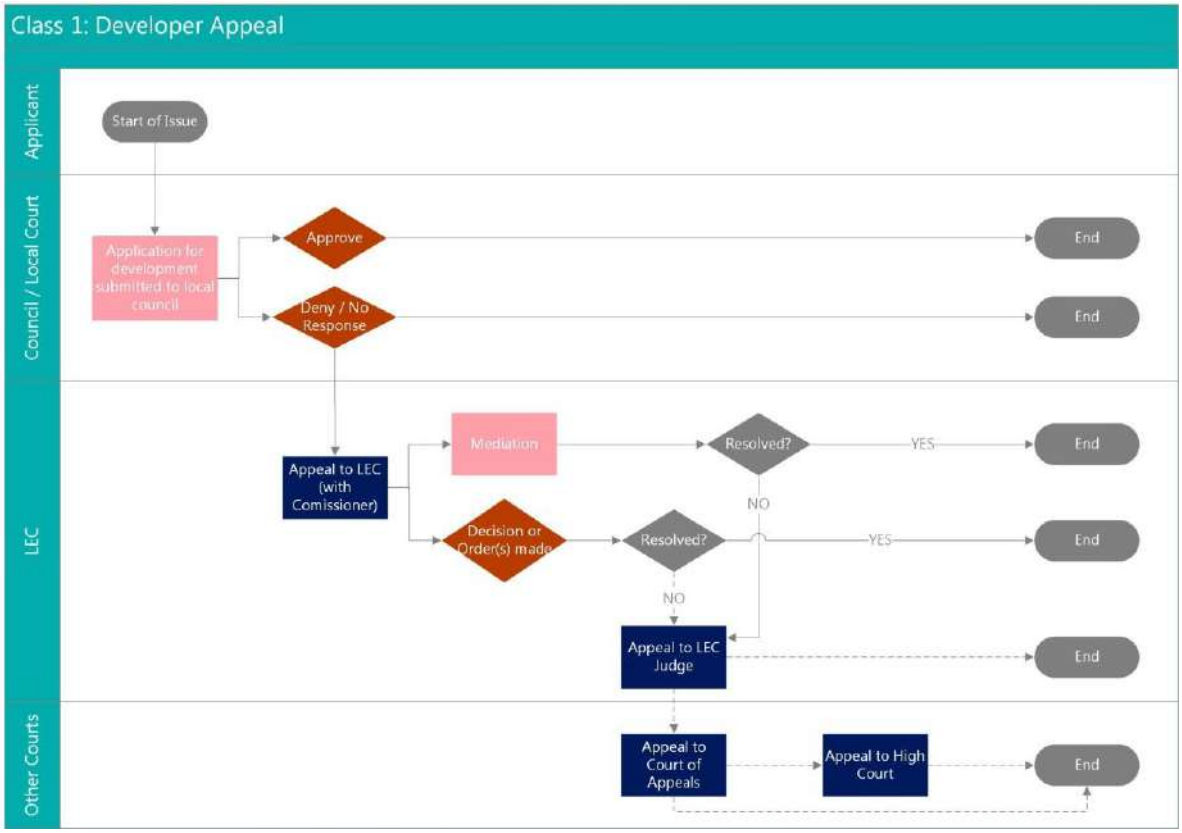
LJF category	JusticeLink order type
	Adjourned for hearing (Class 3 Compensation Directions) >
	Adjourned (hearing continued)
	Adjourned for hearing (Class 8) >
	Adjourned for hearing (s56A appeal directions) >
	Proceed to s. 34(4)(b) hearing - adjourned for hearing >
	Adjourned for hearing on preliminary questions (Directions)
	Adjourned in Hearing Phase
	Adjourned for hearing
	Adjourned for hearing (Class 3 Valuation Directions) >
Adjourned for directions	Adjourned (Class 1 DA Directions)
	Adjourned (Class 1-3 Misc Directions)
	Adjourned (Class 4 Directions)
	Adjourned (Class 4 Judicial Review Directions)
	Adjourned (Class 1 RDA Directions)
	Adjourned for consent orders hearing (Directions) >
	Adjourned (Class 3 Compensation Directions)
	Adjourned (Class 3 Valuation Directions)
	Adjourned (Class 3 ALC Second Directions)
Reserved	Reserved Judgment / Reserved judgment
	Proceeded to hearing phase - Judgment reserved >
	Proceeded to s. 34(4)(b) hearing - Judgment Reserved >
	Reserved Judgment (further submission to be supplied) >
Interlocutory	Interlocutory orders - other
	Notice of motion granted >
	Notice of motion withdrawn >
	Notice of motion dismissed > [Motions]
	Notice of motion granted
	Variation to timetable granted
	Notice of motion refused/dismissed >
	Notice of motion refused >
	Interlocutory - Other
	Notice of motion withdrawn
Other order	Court Orders in Relation to Subpoenas
	Judgment given with directions (without final orders) >
	Other amending orders
	Costs order
	Injunction

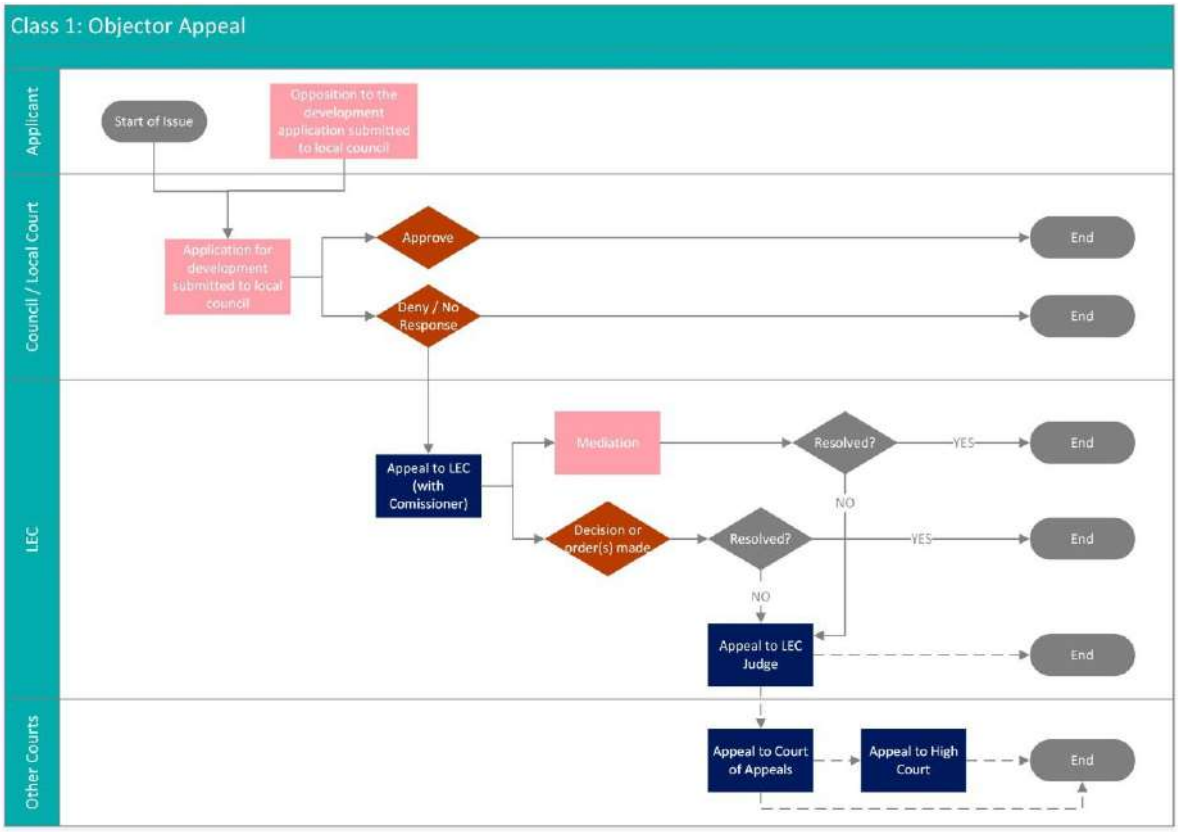
LJF category	JusticeLink order type
Case management	Case management orders and directions
Administrative	Vacate Listing Date/Vacate listing date
	Create chamber Notice of motion in court to be listed

Source: LEC JusticeLink data for all cases with a claim related proceeding recorded as first finalised June–December 2016.

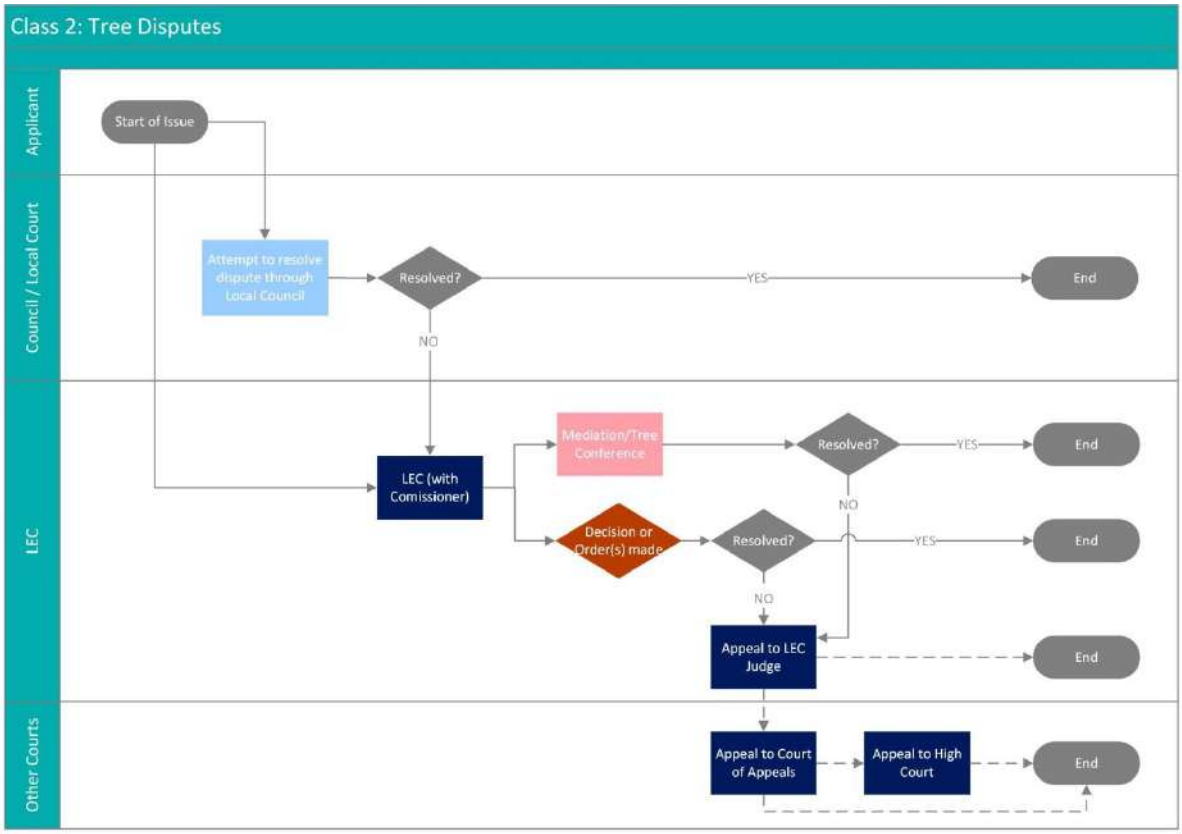
Appendix 3: Flow charts

Flow chart: Planning – residential and non-residential claims

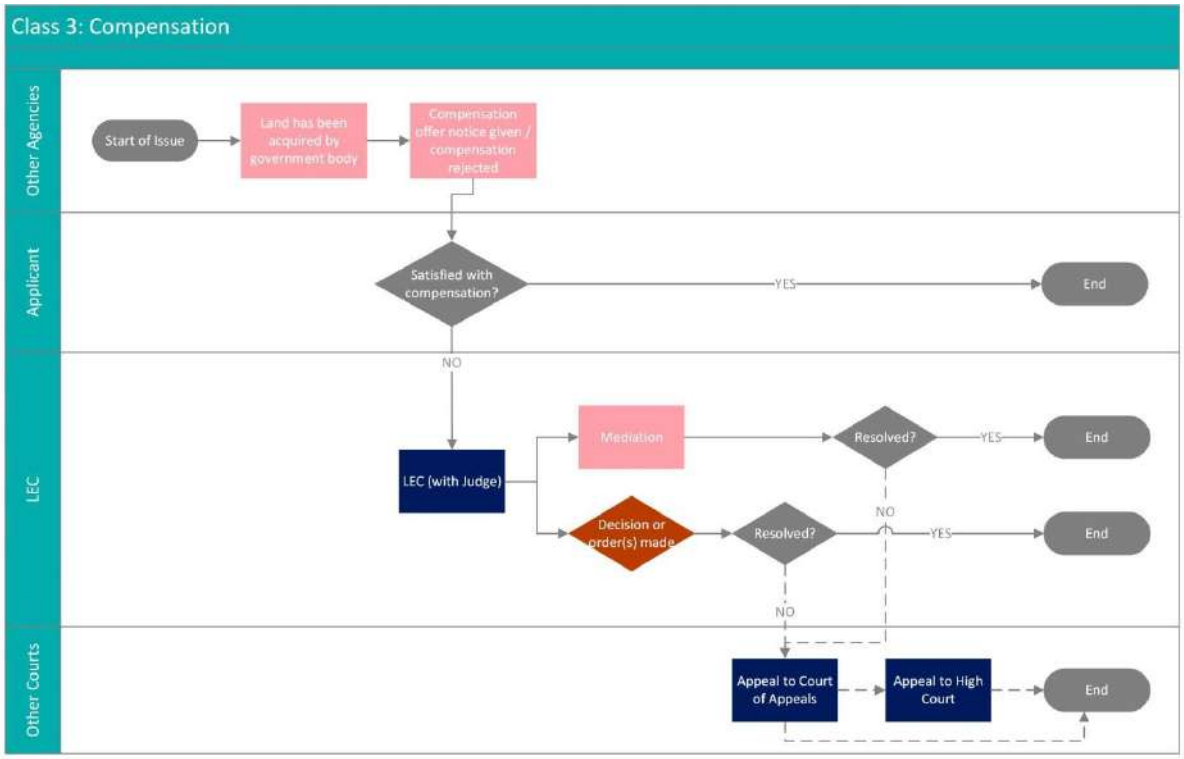




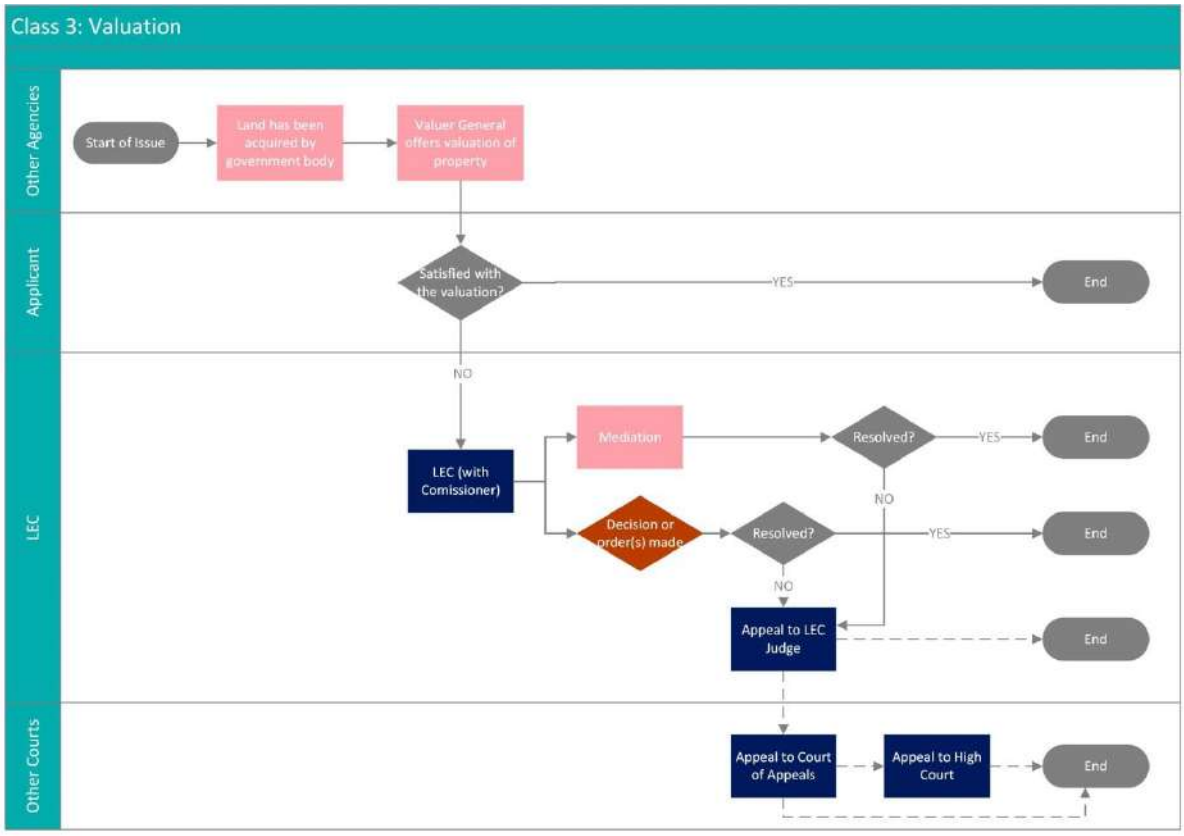
Flow chart: Tree dispute claims



Flow chart: Compensation claims



Flow chart: Valuation objection claims



Appendix 4: Procedures for lodging and responding to claims

The procedures for lodging and responding to claims in the Land and Environment Court of NSW are set out below.

Class 1 – Residential/Non-Residential Development Appeals[46] [47]

- Development appeal is commenced by filing a completed class 1 Application Form
- After the applicant serves the application, each respondent (consent authority and applicant for development consent where applicable) needs to acknowledge service and register its desire to take part in the proceedings. This is known as filing a Notice of appearance. Each respondent needs to complete and file with the Court, and serve on the applicant, a Notice of appearance
- Statement of facts and contentions are served by the respondent on the applicant in order to identify the issues in dispute
- If the proceedings involve an appeal against a determination to grant development consent for development subject to conditions, then the applicant is to file a Statement of facts and contentions
- If expert evidence is required an application is to be supported by a completed information sheet
- To assist the Court in making the appropriate directions, each party is to hand in at the first directions hearing a completed information sheet
- Any application by Online Court to adduce expert evidence must be supported by a completed hearing information sheet
- If any party seeks to raise an issue of fact or law that the party contends precludes the determination of the development application in a particular way or otherwise seeks to have an issue dealt with separately before the final hearing, the party must apply to do so by Notice of motion supported by a short affidavit
- Any party may seek expedition of a residential development application appeal by Notice of motion with a short affidavit
- To amend a development appeal or apply for leave for amendments the applicant must give Notice of motion accompanied by a short affidavit
- If the parties settle the dispute and do not require the Court to make any orders then the applicant is to file a Notice of discontinuance signed by all parties

[46] Land and Environment Court of New South Wales 2017, Practice Note: Class 1 Residential Developmental Appeals, Sydney, viewed 10/1/2018, http://www.lec.justice.nsw.gov.au/Documents/Practice%20Notes/PN_Class%201%20Residential%20Development%20Appeals.pdf

[47] Land and Environment Court of New South Wales 2017, Practice Note: Class 1 Development Appeals, Sydney, viewed 10/1/2018, http://www.lec.justice.nsw.gov.au/Documents/Practice%20Notes/PN_Class_1_Development_Appeals.pdf

- The parties are to file any proposed consent orders signed by all parties before the date fixed for the hearing of the application for final orders by consent

Class 1, 2 and 3 – Miscellaneous Appeals[48]

- Miscellaneous appeals are to be commenced by an Application class 1, 2 or 3, as the case may be
- After the applicant serves the application, the respondent, such as the public authority whose decision is being appealed needs to acknowledge service and register its desire to take part in the proceedings. This is known as filing a Notice of appearance
- Parties may request short matters to be fixed for hearing before a duty commissioner or judge. The parties may file the request with the Registry before the first directions hearing
- Where a commissioner has heard and determined a miscellaneous appeal, any party seeking an order for costs of the proceedings must apply for costs by Notice of motion

Class 2 – Tree Disputes[49]

- Applications concerning damage to property or likelihood of an injury are to include a tree dispute form
- Applications concerning severe obstruction of sunlight or views are to include a tree dispute form
- After the applicant serves the application on the neighbour and any other person directed by the Court, each person who wishes to participate needs to acknowledge service and register their desire to take part in the proceedings. This is known as filing a Notice of appearance
- If any party seeks to raise an issue of fact or law that it contends precludes or demands the determination of the tree dispute application in a particular way or otherwise seeks to have any issue dealt with separately before the final hearing, then the party raising that issue is to identify it and provide a document setting out the issue
- Any party making an application for an early hearing must be supported in writing with a short statement setting out the reasons
- Any application to amend is to be in writing and accompanied by a short statement in support explaining the reasons
- Applications to change hearing dates fixed by the Court are to be in writing, with a statement explaining the reasons the hearing date should be changed

[48] Land and Environment Court of New South Wales 2017, Practice Note: Class 1, 2 and 3 Miscellaneous Appeals, Sydney, viewed 10/1/2018, http://www.lec.justice.nsw.gov.au/Documents/Practice%20Notes/PN_Classes123_Miscellaneous_Appeals.pdf

[49] Land and Environment Court of New South Wales 2014, Practice Note: Class 2 Tree Applications, Sydney, viewed 10/1/2018, http://www.lec.justice.nsw.gov.au/Documents/practice_note_class_2_tree_applications_revised_280214a.pdf

Class 2 and 3 – Strata Scheme Development Proceedings[50]

- Strata Scheme Development proceedings are to be commenced by completing and lodging an Application in class 2 or 3, as the case may be
- Once the application has been served on the respondents by the applicant an affidavit of service needs to be prepared and filed. The affidavit is to be filed on or before the first directions hearing and is to include:
  - The date of service on each person required to be served;
  - The method of service used; and
  - The name, address and occupation of the person serving the application.
- In s. 66 and s. 85 appeals, after the applicant serves the application, the respondent(s) are required to acknowledge service and register their desire to take part in the proceedings. This is known as filing a Notice of appearance. The respondent needs to complete and file with the Court, and serve on the applicant, a Notice of appearance.
- In s. 86 and s. 92 proceedings, the proceeding can be commenced without a respondent. The parties that must be served with the application (see s 86(3)-(4) and s 92(2)-(3) of the Act respectively) have the right to become a respondent in the proceedings. This is to be done by filing a Notice of appearance and serving the Notice of appearance on the other parties in the proceedings.
- In s. 179 proceedings, certain persons or entities are entitled to be served with the application (179 (2)(b)–(e) of the Act) and are entitled to lodge a Notice of objection. If that party wishes to be joined as a respondent to the proceedings, they are required to apply to the Court to be formally joined as a respondent. This is done by filing with the Court and serving on the other parties to the proceedings a Notice of motion and an affidavit explaining why the person should be joined as a party to the proceedings.

Class 3 – Compensation Claims[51]

- A class 3 Compensation Claim is to be commenced by filing in the Registry of the Court a completed class 3 Application Form. The application is to attach the:
  - notice of intention to acquire the land
  - claim for compensation
  - compensation notice
  - acquisition notice published in the Government Gazette
  - a schedule of losses attributable to disturbance under s. 59(a) to (e) of the Just Terms Act
  - a schedule of disturbance loss heads of claim which may arise under s 59(f)
  - all lay evidence
- After the applicant serves the application, the acquiring authority needs to acknowledge service and register its desire to take part in the proceedings. This is known as filing a

[50] Land and Environment Court of New South Wales 2017, Strata Scheme Development proceedings, Sydney, viewed 10/01/2018, http://www.lec.justice.nsw.gov.au/Pages/types_of_disputes/class_2_and_3_strata/Strata_process/strata03-how-to-start.aspx

[51] Land and Environment Court of New South Wales 2011, Practice Note: Class 3 Compensation Claims, Sydney, viewed 10/1/2018, http://www.lec.justice.nsw.gov.au/Documents/class-3-compensationclaims.pdf

Notice of appearance. The acquiring authority needs to complete and file with the court, and serve on the applicant, a Notice of appearance

- The applicant is to serve with its originating application: (a) a schedule of losses attributable to disturbance; (b) a schedule of disturbance loss heads of claim which may arise; (c) all lay evidence
- At the first directions hearing the respondent is to hand to the court a statement as to if they accept the Valuer Generals determination
- At the first directions hearing the parties are to hand to the court an agreed statement or separate statements on their expert evidence
- At each directions hearing the parties are to hand to the court agreed or competing short minutes of proposed directions
- The usual directions will be that the following documents be served or exchanged or the following events occur within the following times thereafter:
  - (a) respondent's schedule and evidence of losses attributable to disturbance under s 59(a) to (e) of the Just Terms Act, and all lay evidence - 1 week
  - (b) applicant's evidence in reply re loss attributable to disturbance under s 59(a) to (e) of the Just Terms Act, and lay evidence in reply - 2 weeks
  - (c) each party's expert evidence other than valuation evidence - 4 weeks
  - (d) joint experts' reports other than valuation report - 6 weeks
  - (e) applicant's schedule and evidence of losses attributable to disturbance under s 59(f) - 6 weeks
  - (f) respondent's schedule and evidence of losses attributable to disturbance under s 59(f) - 8 weeks
  - (g) joint report of experts on losses attributable to disturbance - 10 weeks
  - (h) each party's valuation evidence - 11 weeks
  - (i) joint valuation experts' report - 13 weeks
  - (j) applicant's points of claim - 14 weeks
  - (k) respondent's points of defence - 15 weeks
  - (l) settlement or conciliation conference - 16 weeks
  - (m) second directions hearing - 17 weeks
- Other than amendments sought during the hearing or where the other party consents, leave to amend is to be sought by Notice of motion accompanied by a short affidavit

Class 3 – Valuation Objections[52]

- The appeal is to be commenced by a class 3 Application. The application is to attach the:
  - valuation notice
  - letter of objection
  - Valuer General's response to the objection.
- After the applicant serves the application, the Valuer General needs to acknowledge service and register its desire to take part in the proceedings. This is known as filing a Notice of appearance

[52] Land and Environment Court of New South Wales 2007, Practice Note: Class 3 Valuation Objections, Sydney, viewed 10/1/2018, http://www.lec.justice.nsw.gov.au/Documents/pn_class_3_valuation_objections_14_may_2007.pdf

- Within 28 days of the first directions hearing, the Valuer General is to file and serve a Statement of facts
- Within 28 days of the first directions hearing, the applicant is to file and serve a statement outlining the applicant's grounds of objection to the valuation
- The valuation objections information sheet is to be completed and filed at the first directions hearing for this purpose
- Parties requesting short matters to be heard before a duty commissioner or judge must file the request with the Registry
- Any party may seek expedition of a valuation objection by Notice of motion, with a short affidavit in support setting out the reasons in support of expedition
- Leave is to be sought by Notice of motion, with an affidavit in support
- Both parties are to file and serve statements of any lay witnesses within 21 days of the second directions hearing

Class 3 – Aboriginal Land Claims[53]

- A class 3 Aboriginal land claim appeal is to be commenced by filing in the Registry of the Court a completed class 3 Application Form
- A stamped copy of the application is to be served on the Minister within 7 days of filing
- After the applicant serves the application, the Crown Lands Minister needs to acknowledge service and register his or her desire to take part in the proceedings. This is known as filing a Notice of appearance
- Within 14 days of being served with the application the Minister is to issue subpoenas to relevant public authorities, public officials or other persons for documents relevant to whether or not the lands claimed are claimable Crown lands
- Within 21 days of being served with the application the Minister is to provide to the applicant copies of all documents in the Minister's possession or control relevant to the Minister's grounds for refusing the claim the subject of the application
- At the first directions hearing, the Minister is to hand to the Court a list of:
  - (a) the public authorities, public officials or other persons to whom the Minister has already issued subpoenas and the response to those subpoenas; and
  - (b) the further persons to whom the Minister wishes to issue subpoenas.
- At the second directions hearing, the applicant is to hand to the Court a list of persons to whom the applicant wishes to issue subpoenas
- If applicable, the applicant is to hand to the Court a statement of the disciplines in respect of which the applicant proposes to call expert evidence
- At the second directions hearing, the parties, having conferred beforehand, are to hand to the Court agreed or competing short minutes of the directions they propose

[53] Land and Environment Court of New South Wales 2012, Practice Note: Class 3 Aboriginal Land Claims, Sydney, viewed 10/1/2018, http://www.lec.justice.nsw.gov.au/Documents/practice_note_class_3%20aboriginal_land_claims%2022_11_12.pdf

Class 4 – Proceedings (Judicial Review)[54]

- Class 4 proceedings are to be commenced by summons filed in the Registry of the Court. A stamped copy of the summons needs to be served on each respondent within 7 days of filing
- After the applicant serves the summons, each respondent needs to acknowledge service and register its desire to take part in the proceedings. This is known as filing a Notice of appearance
- At the first directions hearing the parties are to hand to the Court: (a) agreed or competing short minutes of the directions they propose the Court should make; (b) (if applicable) an agreed statement or separate statements as to the disciplines in respect of which they respectively propose to call expert evidence
- At the first directions hearing, the Court will usually make directions in accordance with Schedule A as follows:
  - (a) In the case of judicial review proceedings only the respondent is to serve its response to the summons within 1 week.
  - (b) The applicant is to serve its affidavits in chief and bundle of documents [and, in non-judicial review proceedings where appropriate, points of claim] within 2 weeks.
  - (c) The respondent is to serve any affidavits and a bundle of any additional tender documents [and, in non-judicial review proceedings where appropriate, points of defence] within 5 weeks.
  - (d) The applicant is to serve any affidavits in reply and a bundle of any additional tender documents [and, in non-judicial review proceedings where appropriate, points of reply] within 7 weeks.
  - (g) At the second directions hearing the parties are to hand to the Court an agreed estimate or competing estimates of the duration of the trial broken down into the elements of the trial:
    - (i) opening addresses,
    - (ii) tender of written evidence,
    - (iii) cross-examination (grouping experts by categories),
    - (iv) any inspection of properties,
    - (v) closing submissions.
- At the second directions hearing:
  - The parties are to hand to the Court realistic agreed or competing estimates of the duration of for the trial, broken down into the elements of the trial.
  - The parties are to hand to the Court agreed or competing short minutes of the directions they propose the Court should make.
- Leave is to be sought by Notice of motion, with an affidavit in support

[54] Land and Environment Court of New South Wales 2014, Practice Note: Class 4 Proceedings, Sydney, viewed 10/1/2018, http://www.lec.justice.nsw.gov.au/Documents/practice_note_class_4%20_17_12_13.pdf

Class 8 – Mining matters[55]

- Proceedings in Class 8 of the Court's jurisdiction may be commenced either by summons or Statement of claim, depending on the nature of the proceedings and orders claimed (governed by the Uniform Civil Procedure Rules 2005).
- A stamped copy of the summons or Statement of claim needs to be served on each respondent to the proceedings, within 7 days of filing.
- After the applicant serves the summons or Statement of claim, each respondent needs to acknowledge service and register its desire to take part in the proceedings. This is known as filing a Notice of appearance.

[55] Land and Environment Court of New South Wales 2015, Mining matters: How to start proceedings, viewed 10/1/2018, http://www.lec.justice.nsw.gov.au/Pages/types_of_disputes/class_8/Mining-matters-the-process/mining_how.aspx