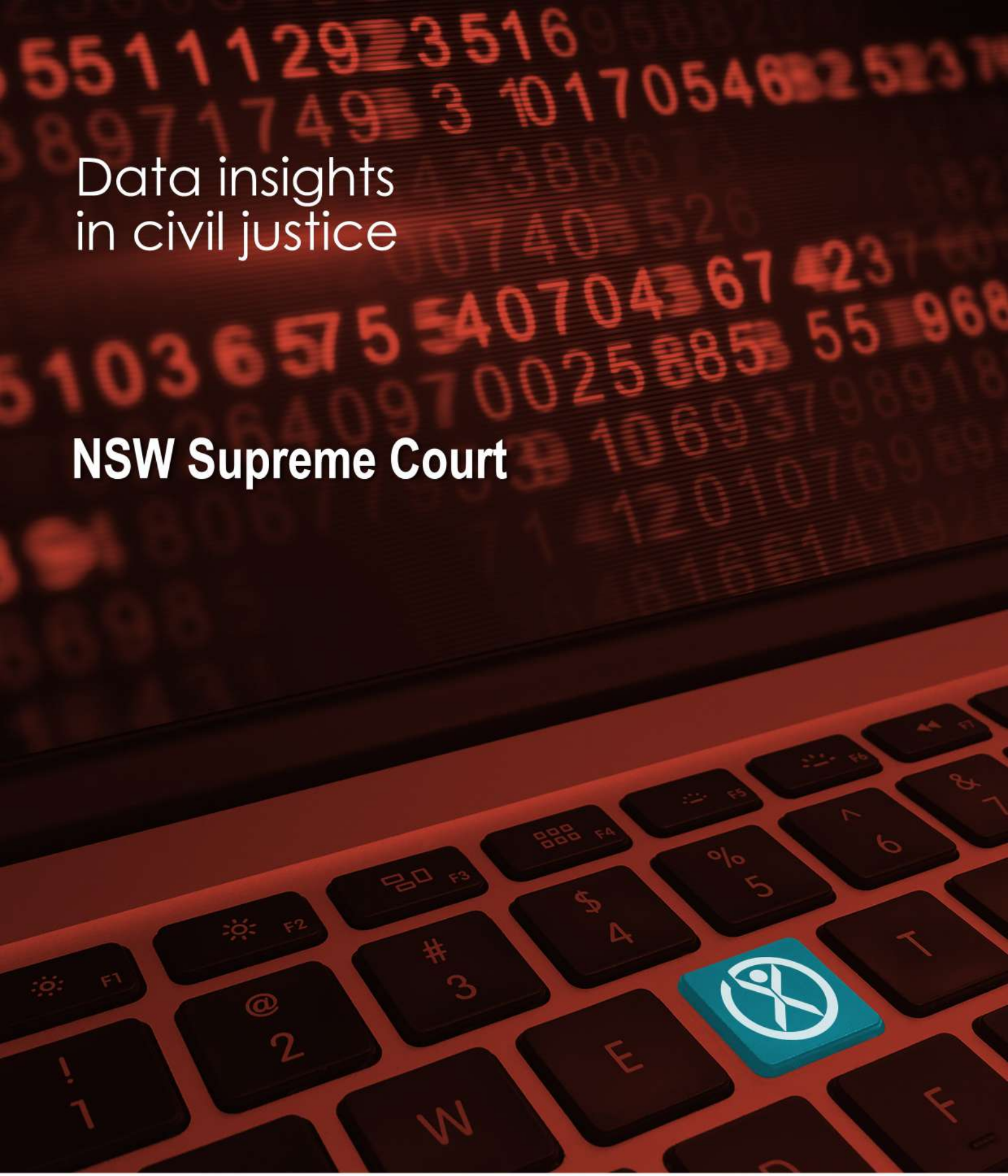
Data insights in civil justice

NSW Supreme Court



LAW AND JUSTICE FOUNDATION OF NEW SOUTH WALES

Data insights in civil justice:

NSW Supreme Court

Suzie Forell, Christine Coumarelos and Amanda Wilson

With Nigel Balmer, Zhigang Wei, Catriona Mirrlees-Black, Maria Karras and Emily Hinton

Law and Justice Foundation of New South Wales

October 2018

LAW AND JUSTICE FOUNDATION OF NEW SOUTH WALES

This report is published by the Law and Justice Foundation of New South Wales, an independent, not-for-profit organisation that seeks to advance the fairness and equity of the justice system, and to improve access to justice, especially for socially and economically disadvantaged people.

This report was prepared by the Law and Justice Foundation of NSW with the financial support of the Department of Justice NSW and the practical assistance of Court Services NSW.

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Title: NSW Supreme Court

ISBN: 978-0-9945950-8-9

Series: Data insights in civil justice

A catalogue record for this book is available from the National Library of Australia

Publisher
Law and Justice Foundation of New South Wales
Level 13, 222 Pitt Street, Sydney NSW 2000
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Ph: +61 2 8227 3200
Email: publications@lawfoundation.net.au
Web: www.lawfoundation.net.au

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Acknowledgements

This work was undertaken with the financial support of the Department of Justice NSW and the practical assistance of Court Services NSW. The Foundation acknowledges and thanks Maureen Tangney, Executive Director, Department of Justice NSW; Chris D'Aeth, Executive Director and Principal Registrar, Jeannie Highet, Manager, Caseload Analysis, Naomi Ubrihien, Manager Client Services, and the records staff at the Supreme Court of NSW; and Sanjay Kumar, Court Services NSW, for providing the JusticeLink data.

Shortened forms

ABN	Australian Business Number
ABR	Australian Business Register
ACN	Australian Company Number
LAW Survey	Legal Australia-Wide Survey
LJF	Law and Justice Foundation of New South Wales
MI	Management information
NCAT	New South Wales Civil and Administrative Tribunal
NGO	Non-government organisation
NOM	Notice of motion
NSW	New South Wales
SOC	Statement of claim
UCPR	Uniform Civil Procedure Rules

Key terms in this report

Case creation date: the date that the first Supreme Court proceeding in the case was created on JusticeLink. Generally, this will be the same day or within days of the case first being filed in the Supreme Court, and is used in this report as a proxy for filing date.

Case first closed date: the date recorded on JusticeLink as the date the substantive case was first closed in the Supreme Court. Note, however, that this date may not accurately reflect the date the case was actually finalised in court for some cases, in particular, some cases that were manually rather than automatically updated to closed status on JusticeLink.[1]

Data quality: the accuracy and completeness of the JusticeLink data and its utility for answering the policy questions of interest.

Defendants: used as a shorthand for 'defendants and respondents'.

Finalising outcome: the order (e.g. final order) or notice (e.g. notice of discontinuance) that finalised the case.

Final orders: orders relating to the substantive claim or application that usually finalises a matter (e.g. judgment, consent order, dismissal etc.). Final orders will thus update the

[1] Note also that, while the substantive case may be closed, activity on a case *may* continue beyond this if, for instance, enforcement or costs proceedings are initiated.

participant status to a finalising status on JusticeLink (e.g. 'enforceable' or 'non-enforceable', depending on whose favour the order is made in).

Interim orders: orders on interlocutory matters (e.g. injunctions) or other decisions/orders made in relation to non-substantive proceedings in the case (e.g. a notice of motion) that do not finalise a substantive proceeding, and therefore, will typically not update the participant status on JusticeLink to a finalising status (unless it is enforcement-related).

JusticeLink: the NSW Courts management information system.

Lists: summarised categories based on the Supreme Court lists on JusticeLink.[2]

Plaintiffs: used as a shorthand for 'plaintiffs and applicants'

Procedural orders: orders relating to the administration or progress of a case such as adjournments, case management orders/directions and subpoena-related orders. Procedural orders will not finalise a substantive proceeding and will not typically update participant status on JusticeLink.

Proceeding: the JusticeLink definition of proceeding, which differs from the vernacular use of the term. In JusticeLink, 'proceeding' describes a component part of a case. Within a Supreme Court civil case there might be only one proceeding recorded on JusticeLink (e.g. a claim) or there might be multiple proceedings (e.g. a claim proceeding, an amended claim proceeding, a cross-claim proceeding and/or notice of motion proceeding). Information about participants, listings and orders are attached to each proceeding within a case.

Selected cases: all Supreme Court cases that involved a claim matter or an application under corporations law matter first closed in 2016. These cases constituted 93.6% of all cases first closed in the Supreme Court in 2016, once uncontested probate cases were excluded.

Substantive proceeding: the last proceeding involving a claim (or amended claim) or an application under corporations law within each selected case. This proceeding was treated as the main proceeding of the case for analysis purposes.

[2] See Table M1 in Appendix 1.

Key messages

The Law and Justice Foundation of NSW (the Foundation) was engaged by the Department of Justice NSW to investigate the quality and utility of each court and tribunal's data in informing policy and practice. This report focuses on Supreme Court data.

The report explores the quality and utility of data extracted from the Court data system, JusticeLink, by seeking to answer the following key questions of interest to the Department. For each question, we report on the quality of the data provided and any issues we encountered in using the data. We then attempt to provide answers to those questions using the extracted data, to assess the utility of the data for policy purposes.

The questions of interest were:

1. What types of civil matters are finalised in the Supreme Court?
2. What is the monetary value of Supreme Court cases?
3. Who is taking action against whom in the Supreme Court?
4. What type of Supreme Court cases are different entities involved in?
5. In which Supreme Court cases do defendants respond?
6. Who is represented in the Supreme Court and for what cases?
7. How do cases progress in the Supreme Court?
8. How are Supreme Court cases finalised?
9. How do Supreme Court amounts sought compare to awards made?
10. How long do Supreme Court cases take to finalise?

We found that, overall, the suitability of JusticeLink data for answering these questions varied considerably. The quality of the data varied in terms of its accuracy and completeness. It also varied in terms of its utility for analysis and for informing policy, with some data items requiring considerable additional classification and manipulation to produce the tables presented in this report. Generally speaking, data could not be taken directly from JusticeLink to answer the questions without considerable modification.

Key challenges to using Supreme Court data in its current form for policy purposes variously arise from:

- the data available and how it is defined
- the accuracy and/or completeness of data entered on the JusticeLink system
- how data can be and is entered and stored on JusticeLink
- how data can be retrieved and reported.

Critically, a number of these issues have their foundation in the JusticeLink database. A key feature of this system that affects data quality and its use for policy purposes is the fact that the JusticeLink system is a defendant-driven system, first implemented in NSW Courts for criminal matters. However, civil cases are primarily driven by the activities of plaintiffs (and applicants) and indeed, in some matters, there is no defendant. A defendant-driven data system makes the recording and management of civil cases more difficult and subject to error.

Executive summary

Overview

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 and Supreme Court, the Land and Environment Court and the NSW Civil and Administrative Tribunal (NCAT). To facilitate this process, the Law and Justice Foundation of NSW (the Foundation) has been 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 Supreme Court data.

The role of the Supreme Court

The Supreme Court is the superior court in the state's judicial hierarchy, with civil work divided between 9 Common Law Division lists and 15 Equity Division lists. Supreme Court cases can be filed at the Supreme Court registry or, depending on the matter, online. One-third (33.8%) of 'selected cases' that we reviewed (defined below) were filed online.

Method

This report explores the quality of the data, including the utility of the data *for policy purposes,* by seeking to answer the following key questions set by the Department of Justice, with data extracted from the Court data system, JusticeLink. For each question, we report on any issues we encountered with the accuracy and completeness of the data. We then attempt to provide answers to those questions by analysing the extracted data to assess the utility of the data for policy purposes. Table 2 in the report provides the criteria used to assess data quality. The questions of interest were:

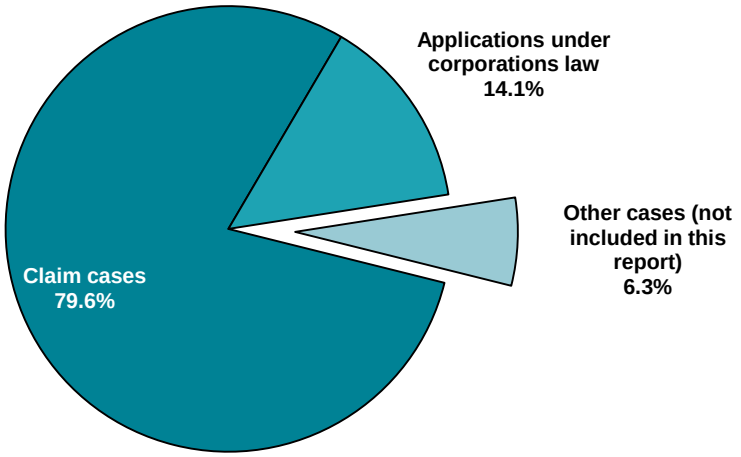
1. What types of civil matters are finalised in the Supreme Court?
2. What is the monetary value of Supreme Court cases?
3. Who is taking action against whom in the Supreme Court?
4. What types of Supreme Court cases are different entities involved in?
5. In which Supreme Court cases do defendants respond?
6. Who is represented in the Supreme Court and for what cases?
7. How do cases progress in the Supreme Court?
8. How are Supreme Court cases finalised?
9. How do Supreme Court amounts sought compare to awards made?
10. How long do Supreme Court cases take to finalise?

The findings presented reflect the research team's best assessment of how to answer these policy questions using the data provided, while also taking account of the approach used in the earlier reports in this series. There are, of course, alternative ways to analyse the data and others might take a different approach.

The data selected for review

This review primarily involved the analysis of 'point in time' JusticeLink data, for 6,887 Supreme Court civil cases closed for the first time in 2016.[3] Described throughout the report as the '**selected cases**', these include 5,852 claim cases and 1,035 application under corporations law cases (see Figure 1).[4] The selection of these cases for analysis reflects the need to both represent the activity of the Supreme Court but also ensure some comparability with the reports already completed on the Local and District Courts (where the analysis focused on claim proceedings only).

Figure 1: Cases selected for review in this report (N=6,887)



Note: Selected cases (N=6,887) were all Supreme Court cases involving a claim matter (N=5,852) or an application under corporations law matter (N=1,035) that were closed for the first time in 2016. The 'other cases' (N=468) in the figure, which were not included in our analysis, are those in which the substantive proceeding was *not* a claim or an application under corporations law (e.g. various certificates, applications, summons matters, generic proceedings, notices of motion; see Table 5). Uncontested probate cases involving probate pre-applications (N=26,831) are excluded from the figure and from our analysis.

In the Supreme Court, 23.8% of the selected cases had more than one JusticeLink 'proceeding'. Unless otherwise stated, our analysis was based on only one JusticeLink proceeding per selected case, described in this report as the '**substantive proceeding**'. We defined the 'substantive proceeding' as the last proceeding involving a claim (or amended claim) or an application under corporations law. The process for selecting the substantive proceeding in each case is described in the methodology section of this report.

We also drew a random sample of cases (N=1,000 in total) from the 6,887 selected cases, for which we coded the plaintiffs and defendants in the substantive proceeding into their respective entity types. Finally, we reviewed 365 electronic and paper casefiles, including a stratified random sample (by list type) of 100 cases and a further 265 non-random cases to investigate specific data issues.

[3] Cases can be reopened for subsequent proceedings, such as further applications and/or costs or enforcement matters.

[4] See note to Figure 1 for a description of Supreme Court cases excluded from the present report.

JusticeLink versus common use of 'proceeding'
The JusticeLink definition of 'proceeding' differs from the vernacular use of the term. In JusticeLink, the term 'proceeding' describes a component part of a case. Within a Supreme Court civil case there might be only one proceeding recorded on JusticeLink (e.g. a claim) or there might be multiple proceedings (e.g. a claim proceeding, an amended claim proceeding, a cross-claim proceeding and/or notice of motion proceeding). Information about participants, listings and orders are attached to each proceeding within a case.

Supreme Court data system and data quality

Information about Supreme Court matters is held on JusticeLink, the data system for NSW Courts. The data in this system is held as unit records (such as by JusticeLink proceeding number or entity identifier) in a large number of data tables. The data analysed for this report was taken from these data tables, as provided by Court Services NSW.

Overall, the suitability of JusticeLink data for answering the policy questions posed varied considerably. The quality of the data first varied in terms of its accuracy and completeness. It also varied in terms of its utility for data analysis, with some data items requiring considerable additional classification and manipulation to produce the tables presented in this report. **Generally speaking, data could not be taken directly from JusticeLink to answer the policy questions without considerable modification**.

Data quality – The accuracy and completeness of the JusticeLink data and its utility for answering the policy questions posed.
See Table 2 for further details.

Key challenges to using Supreme Court data in its current form for policy purposes variously arise from:

- the data available and how it is defined
- the accuracy and/or completeness of data entered on the system
- how data can be and is entered and stored on JusticeLink
- how data can be retrieved and reported.

Critically, a number of these issues have their foundation in the JusticeLink database. Key features of this system that affect data quality and its use for policy purposes are described in the introduction of the report and summarised below.

A system first implemented for criminal matters

While developed for case management in both criminal and civil matters, the JusticeLink system was first implemented in NSW Courts for criminal matters. It was first used, therefore, as a defendant-driven system, and remains so even for civil matters. However, civil cases are primarily driven by the activities of plaintiffs (and applicants) and, indeed, in some matters, there is no defendant. **Critically, a defendant-driven data system makes the recording and management of civil cases more difficult and subject to error.**

This was evident in the data. For instance, in seeking to identify how and when cases closed we noted that some closed cases had no final order and appeared to have closed on a procedural order. In other cases, the dates that the files were closed did not always match the date of the finalising outcome. These discrepancies arise because, in certain cases, system issues prevent the allocation of a final order, which in turn automatically triggers JusticeLink to update the case status to 'closed'. Without this final order and automatic recording of closure, cases stay 'open' on JusticeLink until they are individually and manually closed. Not only is this an administrative burden on the court, but it inevitably affects the quality and utility of the data on the system.

Complex range of data fields and data limitations

JusticeLink is also a complex data system, with information held in a number of different parts (e.g. case level data, proceeding-level data and participant-level data). Some data (e.g. claim type or list type) may be entered once (e.g. against the first or substantive proceeding) but not repeated or repeated accurately for other proceedings. Consequently, it is sometimes not apparent whether a blank field for a particular case in the data reflects that 1) the field was 'not applicable' to the case or 2) the information is relevant but is 'missing' from that field as a result of not being entered in every field to which it is relevant. Further, the data provided for this review was extracted from different parts of the system, adding complexity to the analysis and room for error at the point of extraction.

Key questions

1. What types of civil matters are finalised in the Supreme Court?

DATA QUALITY – HIGH (based on list type)
'List type' data is largely complete and accurate, and so provides a good overview of the nature of Supreme Court matters.

We analysed the selected cases in the Supreme Court by list rather than claim type due to the large number of Supreme Court claim types (N=157), some of which reflect specific order types. Overall, 41.1% of the selected cases were listed in the Common Law Division and 58.3% were listed in the Equity Division. One in five of these cases were in the Common Law *Possession of land* list, while there were around 15.0% of matters in each of the following lists: *Common law – general*, *Corporations*, *Equity – general – family provision*, and *Equity – general – other*.

Selected cases in this report are all Supreme Court cases that involved a claim matter or an application under corporations law matter first closed in 2016.

The ***substantive proceeding*** reported is the last JusticeLink proceeding for the case involving a claim or application under corporations law.

Within the *Common law – general* list, 29.9% of the selected cases were personal injury-related and a further 20.6% were money claims. Within the *Equity – general – other* list, 21.8% were 'declaration (single remedy)', 21.6% had the claim type 'other' and 14.8% concerned trusts or trustees.

2. What is the monetary value of Supreme Court cases?

Supreme Court claims[5] may be for a liquidated or an unliquidated amount, or they may be for a non-monetary order.

DATA QUALITY – LOW
JusticeLink data on amount sought is incomplete and does not separate cases where monetary amount is irrelevant from cases where monetary amount is relevant but not recorded. Further, it is unclear in the data whether the specified amount is liquidated or otherwise. Given these limitations, JusticeLink data cannot be used to describe the overall monetary value of Supreme Court cases.

Noting that a monetary amount will not be relevant to all cases, the amount sought was only recorded against the substantive proceeding for 21.4% of all claim cases, nearly four-fifths of which were in the *Possession of land* list. Where no amount is recorded, it is unclear whether this is because there was no monetary order or whether the order amount is missing. With 'amount sought' only recorded for a specific subset of Supreme Court matters, 'amount sought' is **not** a reliable indicator of the monetary value of Supreme Court cases more broadly.

3. Who is taking action against whom in the Supreme Court?

Supreme Court matters may involve plaintiffs or applicants and defendants or respondents. For simplicity, we simply describe parties as plaintiffs and defendants. Of note, some applications in the Supreme Court do not involve a defendant.

DATA QUALITY – LOW
JusticeLink provides generally accurate and complete data on whether plaintiffs and defendants are individuals or organisations. However, there is no further breakdown of entity type to enable a more complete understanding of who is taking action against whom in the Supreme Court. It is therefore not possible to determine types of organisations directly from the aggregate data. Considerable coding work was required to categorise the data into the more specific entity types provided in this report. Current data on ABN/ACN is poor, both incomplete and inaccurate.

Based on existing JusticeLink data, our analysis indicated that in the substantive proceeding for selected cases:

- half of all first plaintiffs were recorded as individuals, and half as organisations, the vast majority of which were 'corporate' (46.4% of all first plaintiffs)
- 61.5% of first defendants were identified as individuals, and 38.5% were identified as organisations, most of which were corporate (36.9% of all first defendants).

[5] There were no monetary amounts recorded for application under corporations law cases as monetary amounts are typically not relevant to these cases.

To explore the value of more specific information on entities, we classified plaintiffs and defendants in a random sample of 1,000 selected cases into specific entity types. Using this information, we observed that in the substantive proceeding of the selected cases:

- 50.8% of all plaintiffs and 64.0% of all defendants were individuals
- 41.9% of plaintiffs were businesses, as were 25.9% of defendants
- only 5.0% of plaintiffs were government agencies, as were 6.4% of defendants
- 2.1% of plaintiffs and 1.9% of defendants were 'other' entity types including non-government organisations and strata owners.

Using our sample of 1,000 selected cases, we identified:

- individuals taking action against other individuals (in 26.8% of selected cases)
- businesses taking action against individuals (11.2%)
- individuals taking action against businesses (21.6%)
- businesses taking action against other businesses (18.1%).

4. What type of Supreme Court cases are different entities involved in?

DATA QUALITY – LOW
As for Question 3.

Using the most specific entity types identified above, we could see how plaintiffs and defendants in our sample of Supreme Court cases varied by list. For instance:

- All first plaintiffs in the *Defamation*, *Equity – general – family provision*, *Probate* and *Protective* lists were individuals, as were the vast majority (95.8%) of first plaintiffs in the *Professional negligence* list. In contrast, all first plaintiffs in the *Proceeds of crime* list were government agencies. Businesses featured prominently as first plaintiffs in the *Possession of land* (90.7%), *Commercial* (80.5%) and *Technology and construction* (62.5%) lists.
- Individuals dominated most lists as first defendants, particularly in the *Equity – general – family provision* (95.6%) and the *Possession of land* (95.3%) lists. Government agencies featured as first defendants in the *Equity – other* list (83.3%) and businesses featured most prominently as first defendants in the *Technology and construction* (87.0%) and *Commercial* (61.0%) lists.
- Government agencies featured as first defendants in the *Equity – other* list (83.3%) and comprised around one-third of first defendants in the *Professional negligence* and *Administrative law* lists.

5. In which Supreme Court cases do defendants respond?

In the Supreme Court, defence activity is visible by the submission of a notice of defence, notice of appearance and/or a cross-claim.

DATA QUALITY – LOW
JusticeLink provides generally accurate data about whether there is an active response by the defence. However, cases which do not have defendants are difficult to separate from those for which information about the defendant(s) is simply missing. Further, as there are several ways in which the defence may respond, identifying all cases in which the defence is active is not straightforward as several data fields need to be analysed together. Cases with multiple defendants who respond differently add to the challenge of consistent and accurate reporting.

Excluding those matters in which there was no defendant, a notice of defence and/or appearance was filed in the substantive proceeding of 53.8% of selected cases. This varied considerably by list, from 96.0% in the *Professional negligence* list to only 8.8% in the *Possession of land* list (which largely reflects matters dismissed for inactivity or going to default judgment).

Just over one-third (34.0%) of defence notices and 80.0% of appearance notices were filed within 3 months of the proceeding commencing.

6. Who is represented in the Supreme Court and for what cases?

There is considerable policy interest in the question of representation across courts and tribunals in NSW, although data collected across the courts and tribunals and discussions with court staff suggests that the issues arising differ in each jurisdiction. In the Supreme Court, a lack of recorded data on representatives may indicate any one of:

- missing data (there was a representative but this was not recorded)
- a party with some form of legal assistance but no solicitor on the record (e.g. pro bono or other advice)
- a self-represented party, either because they cannot afford representation or because they choose to self-represent, including lawyers who represent themselves.

Assessing rates of representation in the Supreme Court is challenging due to the complexity of matters, some with multiple plaintiffs and defendants over multiple proceedings, and some matters with no defendant. In any one case, none, some or all of the plaintiffs and defendants may be represented, for none, some or all of the case and its hearings. Recognising this complexity, the quality and utility of JusticeLink data on representation varied with the specific question asked.

DATA QUALITY – LOW TO MODERATE
While it was relatively straightforward to assess whether there was *any* representative for *any* plaintiff or defendant at *any* point in a case, it was very difficult to assess how representation varied within groups of plaintiffs and defendants, and how representation changed over the life of the case. Further, it was not possible to assess if (and why) parties were self-represented (that is, had no legal assistance at all), were unrepresented in particular hearings or proceedings, or whether data on representation was at times missing (e.g. for some proceedings, some plaintiffs or some defendants). Thus, lack of representation for a litigant can only be inferred (imperfectly) from the *absence* of a record of representative details (i.e. a blank field) and cannot be distinguished from instances where there was representation but this was not recorded. A field indicating 'self-representation' would assist analysis.

Overall, there was a representative recorded for at least one plaintiff in 96.1% of the selected cases, but for defendants in only 56.6% of these cases. The proportion of cases (with a defendant) in which a defendant had a representative recorded varied considerably by list, from 8.1 in the *Possession of land* list to 94.7% in the *Professional negligence* list. However, among cases for which there was no representative recorded for a defendant, were cases in which the defendant did not actively defend the case (e.g. cases which were discontinued or resulted in default judgment in the *Possession of land* list).

7. How do cases progress in the Supreme Court?

DATA QUALITY – MODERATE
There is no single data field that indicates how cases progress through the Supreme Court, but taken together, proceedings, listing and orders provide some insight. Proceeding and listing information appears to be generally accurate and complete and relatively easy to analyse. While the fact of an order is also generally well recorded, the type of order is inconsistently and at times inaccurately recorded, with categories which are not mutually exclusive. For these reasons, without modification, order data is less useful for understanding case progression.

Three-quarters of all selected cases had only one proceeding, while the remaining had multiple proceedings. Within the substantive proceeding in each case there was an average of 7.4 listings. This average ranged, however, from 1.7 listings in the *Possession of land* list to 20.0 in the *Technology and construction* list and 20.9 in the *Professional negligence* list.

The most common listing types in the substantive proceeding were Directions (58.6% of all listings) and Return of subpoena listings (20.1%).

Supreme Court cases may involve procedural orders, interim orders and/or final orders. Looking across whole cases (all proceedings in the case), more than half of all orders (53.2%) in the selected cases were adjournments, followed by return of subpoena orders (14%) and case management orders/directions (13.5%). This again varied considerably by list.

MEDIATION: DATA QUALITY – LOW
Only court-ordered mediation is recorded on JusticeLink and there is no record of mediation initiated by the parties. Further, our casefile analysis indicated that court-ordered mediation is not reliably recorded on JusticeLink. In addition, mediation order data and mediation listing data did not match.

At least one mediation order was recorded in the substantive proceedings of 398 cases reviewed for this study. Just over one-third (34.4%) of all mediation orders were made in the *Equity – general – family provision* list and 25.6% in the *Common law – general* list.

8. How are Supreme Court cases finalised?

DATA QUALITY – LOW
JusticeLink data on outcomes is not very useful because:

- Some order type categories are too vague/broad/non-mutually exclusive.
- Order types are not always recorded consistently/accurately.
- There is no easy way to identify the finalising outcome (partly due to some cases needing to be closed manually).

From an analytical perspective, the question of how Supreme Court cases finalise is complicated, reflecting the varied and complex cases in this jurisdiction. There are, for instance, multiple final orders in some cases and no final orders in others. However, reporting on finalisation is also complicated by limitations of JusticeLink, which may prevent the appropriate order type to be applied to a proceeding. This in turn results in a failure to automatically update the case status to 'closed'. Related to this is the common use of broad order types that do not meaningfully illustrate how the matter was resolved. Sometimes, orders are recorded within a broad order type category, even though a more specific category is available (e.g. a consent order or judgment being recorded as an 'order'). As a result, the orders correctly recorded in the specific order type categories are likely to be an undercount (that is, missing other relevant orders that are instead recorded in the broader category).

In addition, as some cases finalise with a discontinuance notice rather than an order, the finalising outcomes can only be identified by combining multiple data fields (e.g. orders, discontinuance notices and dates). Further manipulation was also required to identify the finalising outcome from multiple orders/notices recorded on the same date. However, even with these modifications, the utility of the resulting 'finalising outcomes' was limited due to the data quality issues above.

Noting these limitations and counting just one final order per case, we identified at least 31.0% of the selected cases as ending with a consent order or judgment. A further 10.8% were identified as dismissed for inactivity and at least 9.7% resulted in a default judgment. In 5.3% of cases we identified the final outcome as 'application granted' and in 0.6% of cases as a judgment. A notice of discontinuance was identified as the finalising outcome in 8.3% of cases.

9. How do Supreme Court awards sought compare to awards made?

DATA QUALITY – LOW
Amounts sought and judgment amounts were only available for a small proportion of matters, three-quarters of which were in one list. Further, missing information on amount sought cannot be distinguished from those cases where a monetary amount is not relevant. Our casefile analysis suggests that judgment amounts are missing from the data, as they were identified in the text description of *other* final order types (e.g. consent orders) but not recorded as a separate monetary amount (and therefore were unavailable for analysis). Given these limitations, JusticeLink data does not accurately reflect the differences between amounts sought and awards made in Supreme Court cases more generally.

In the data provided, amounts sought and judgment amounts (greater than $0.00) were recorded for less than 7% of the selected cases, 76.1% of which were in the *Possession of land* list, and 19.6% in the *Common law – general* list. Overall, there was little difference between the claim and judgment amounts. Both had a range of $2,131.15 to $20,244,153.87. The mean amount sought was slightly lower than the mean judgment amount ($711,102.94 compared to $731,082.67).

10. How long do Supreme Court cases take to finalise?

There are various ways in which the length of Supreme Court cases can be understood. Based on the data provided, we examined the time from the 'case creation date' to the 'case first closed date'[6] and also to the date of the finalising outcome (as identified in Section 8).

DATA QUALITY – MODERATE
In cases which need to be manually closed on JusticeLink due to system-related limitations, the 'case first closed date' may not accurately reflect the date that the court finished dealing with the case. The case first closed date also does not account for those matters which are reactivated after closure. Each order and notice also has a date attached. However, due to difficulties in identifying the finalising order or notice, these may not always be a reliable indicator of case closure. Considerable data manipulation was required to produce the information presented.

Using each of the methods outlined, we observed that the Supreme Court cases we reviewed varied considerably in their length, individually and by list. While 8.5% of the selected cases were closed within a month of case creation, some took many years to reach a first closed date. Overall, 9.3% took longer than 2 years and there were 8 cases in our data that had been open for more than 10 years, half of which were in the *Protective*

[6] Defined in Section 10.

list.[7] The average (mean) number of months from case creation to case closure was 9.9 months. Again, length of case (however calculated) varied considerably by list and by finalising outcome type.

Looking forward

We have identified several changes which could improve the reliability and utility of the data for policy development, court management and administration. Changes identified include:

- consideration being given to revising Uniform Civil Procedure Rules (UCPR) 'claim types' to more clearly classify cases[8]
- collecting data on 'entity type' using more detailed and well-defined categories (e.g. local council, state government agency, business, not-for-profit organisation). This should be collected separately from information to inform fee type
- investigating the feasibility of more rigorously collecting ABN information and data matching this to the ABR to identify the types of business entities using the court
- having a data dictionary that clearly defines all the fields in JusticeLink and the corresponding data tables, to improve consistency in the interpretation and reporting of JusticeLink data
- investigating ways to improve the quality of data entry (particularly through e-filing and bulk filing) and ongoing audits of data quality
- changes to JusticeLink (or any new data system) to ensure information on outcomes including final orders can be entered correctly, to avoid the need for manual case closure
- changes to JusticeLink (or any new data system) to ensure that non-applicable information is coded differently to, and can be separated from, information that is relevant but is missing on JusticeLink (e.g. monetary amount is irrelevant versus missing; no defendant versus defendant information is missing; self-represented litigants versus litigants are missing information on representation).

[7] Cases in the *Protective* list commonly reopen, as they concern the issues of persons who, for reasons of incapacity, are unable to manage their own affairs. The Supreme Court uses manual spreadsheets rather than JusticeLink to complete reporting on the *Protective* list.

[8] This recommendation is consistent with recommendations in the earlier reports in this series that reviewed the Local and District Courts. See www.lawfoundation.net.au/reports/datainsights

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 and Supreme Courts, the Land and Environment Court and the NSW Civil and Administrative Tribunal (NCAT). To facilitate this process, the Law and Justice Foundation of NSW (the Foundation) were engaged by the Department to investigate the quality and utility of each court and the tribunal's data in informing policy and practice. This report focuses on the data from the Supreme Court's civil jurisdiction.

Supreme Court of NSW

The Supreme Court is the superior court in the state's judicial hierarchy. The civil work in the Supreme Court is divided between the Common Law Division and the Equity Division, with 9 Common Law lists and 15 Equity lists. In addition, the Supreme Court's Court of Appeal hears appeals in civil matters against the decisions of judicial officers of the Supreme Court, other courts, commissions and tribunals.

Background

Data published in annual reports and reviews indicates that the Supreme Court deals with approximately 5% of all civil law matters finalised by courts and tribunals in NSW.[9] As indicated in Table 1, the bulk of civil law matters appear to be heard in the NSW Local Court and the NSW Civil and Administrative Tribunal (NCAT) (49.5% and 42.0% of all matters respectively). Civil matters are also heard in the Supreme and Land and Environment Courts.

However, as noted in earlier reports in this series, the size, complexity and *definition* of matters in each jurisdiction vary.[10] For instance, while cross-claims are included within a single case in the Local and District Courts, cross-claims in NCAT are counted as separate matters. This variation may skew the relative proportion of matters reported in each jurisdiction, and indicates the need for caution when comparing data across the courts and tribunals.

[9] 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). Of note, uncontested applications for a grant of probate (*probate pre-applications)* in the Supreme Court, of which there were 27,011 finalised in 2016, are excluded in these reported data.

[10] 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 www.lawfoundation.net.au/reports/datainsights

Table 1: Annual report finalisations for civil cases, by jurisdiction in NSW, 2014–2015

NSW civil jurisdictions	Finalisations	
	N	%
NCAT (2014–2015)	72,781	42.0
Local Court (2015)	85,852	49.6
District Court (2015)	4,788	2.8
Supreme Court+ (2015)	8,717	5.0
Land and Environment Court (2015)	989	0.6
Estimated total	**173,127**	**100.0**

Sources: NCAT Annual Report, 2014–2015, p. 7; Local Court of New South Wales Annual Review, 2015, p. 16; District Court of New South Wales Annual Review, 2015, p. 22; 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 2015, p. 31. 2015–16 data was not yet available.
+ Common Law Civil and Equity Divisions. Note that uncontested applications for a grant of probate are excluded.

The matters counted and reported also vary. For instance, the Annual Review for the District Court only reports matters that have been case managed by the court. By way of contrast, the Local Court finalisation figures include *all* matters, including 'lapsed' and matters finalised by way of default judgment (the equivalent of both case managed and non-case managed matters). Supreme Court data includes claims as well as a range of other application types which are processed through the Supreme Court. As is the case in the District and Local Courts, cross-claims and other proceedings relevant to a case are usually included within the single case.

The experience of civil law problems

To put court and tribunal figures in context, it is helpful to consider both the number and range of civil legal issues which are experienced by people in NSW in a given year, and if and how these matters are resolved. Importantly, civil law issues may also be resolved *outside* of the tribunal and court system – between the parties directly; through administrative arrangements (e.g. pay by instalment arrangements with local councils) and through Ombudsmen's offices, the Office of the NSW Small Business Commissioner and other avenues. As indicated by the Foundation's LAW Survey (NSW), a proportion of civil law issues will not be dealt with at all.[11]

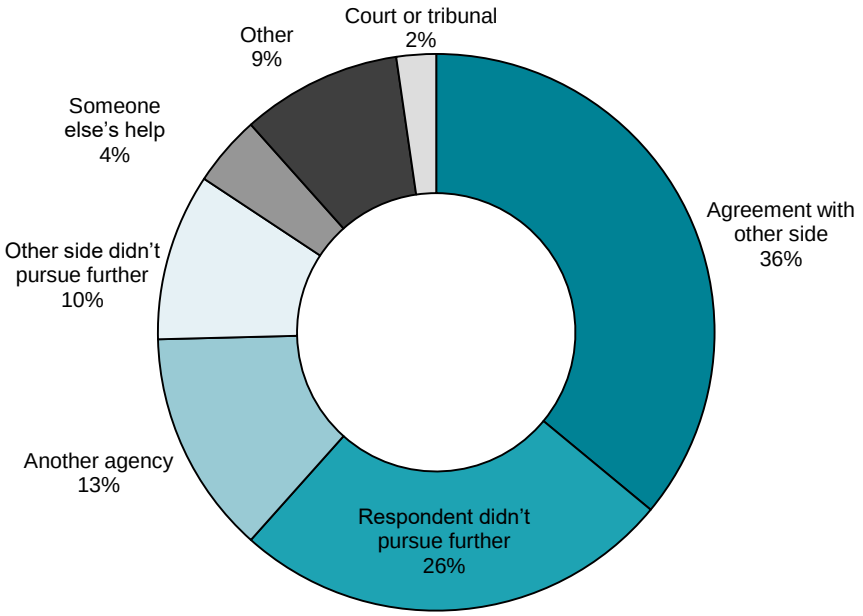
For instance, the LAW Survey asked a random sample of 20,000 individuals about legal problems they had experienced in the previous 12 months and what they had done about those problems. Noting that these problems would have varied in seriousness, NSW respondents did nothing about 19% of the civil law issues experienced.

Regardless of whether survey respondents took any action in response to their legal problem, they were asked how they had 'finalised' their legal problems that were 'now over'.[12] Figure 2 indicates that more than one-third (36%) of *civil law* problems that had been finalised were resolved through agreement with the other party. For a further 26% of

[11] Coumarelos, C, Macourt, D, People, J, McDonald, HM, Wei, Z, Iriana R, & Ramsey, S 2012, *Legal Australia-Wide Survey: legal need in New South Wales*, Law and Justice Foundation of NSW, Sydney, Figure 5.7, p. 101.
[12] 64% of civil law problems were reported to be finalised at the time of interview.

finalised civil law problems, the problem concluded because respondents did not pursue the matter (e.g. they agreed to the demand or did not further pursue their own claim). Only 2% were resolved in a court or tribunal.

Figure 2: How civil legal problems were finalised, LAW Survey (NSW)



Source: LAW Survey (NSW).
Note: N=1,924 finalised civil problems. Data was missing for 37 finalised civil problems. Family and criminal problems, and civil problems that were ongoing at the time of interview, were excluded. 'Other' includes complaint-handling bodies (1.9%), dispute resolution (1.8%) and lawyer's help (1.5%).

Scope of the task

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

1. assess the content and quality (reliability, validity) of Supreme Court civil jurisdiction data as an evidence-base for informing policy 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.

Key questions addressed

This report explores the quality of the data *for policy purposes,* by seeking to answer a set of questions of interest to the Department of Justice, with data extracted from the Court data system, JusticeLink. For each question, we report on the accuracy and completeness of the data provided and any issues we encountered analysing the data (see Table 2 below for assessment criteria). We then attempt to provide answers to those questions by using the extracted data to assess the utility of the data for policy purposes. The questions of interest were:

1. What types of civil matters are finalised in the Supreme Court?
2. What is the monetary value of Supreme Court cases?
3. Who is taking action against whom in the Supreme Court?
4. What types of Supreme Court cases are different entities involved in?
5. In which Supreme Court cases do defendants respond?
6. Who is represented in the Supreme Court and for what cases?
7. How do cases progress in the Supreme Court?
8. How are Supreme Court cases finalised?
9. How do Supreme Court amounts sought compare to awards made?
10. How long do Supreme Court cases take to finalise?

An overview of the methodology

The methodology was developed by the Foundation. The views and conclusions expressed in this report are those of the Foundation and not necessarily those of the Supreme Court of NSW. We drew on data and information from the following sources:

1. data held on JusticeLink for 6,887 Supreme Court civil cases, including information on plaintiffs and defendants, representation status, claim types and amounts, court processes, outcomes and their amounts, and all relevant dates. As described below, while these cases represented only a subset of all Supreme Court civil cases first closed in 2016, they represented all such cases that involved a claim or application under corporations law
2. a random sample of 1,000 cases (involving a claim or application under corporations law first closed in 2016) for which the plaintiffs and defendants were coded in to their respective entity types
3. a stratified random sample of 100 electronic and paper casefiles[13] held by the Supreme Court registry, to verify the accuracy of JusticeLink data, and to collect details not available on JusticeLink such as the details of the case. A further 265 casefiles (largely on JusticeLink) were reviewed to clarify data queries arising from sources 1 and 2
4. relevant documents, including legislation, court rules and regulations, JusticeLink user guides and instructions for e-filing
5. Court and JusticeLink staff.

Details of the methodology are provided in Appendix 1. The source of data used for each analysis is provided in the notes to each table/figure and described in the text.

Data assessment

Table 2 presents the three criteria that we used to assess the quality of the JusticeLink data for answering the policy questions posed – namely, the accuracy, completeness and utility of the data. Based on these criteria, the data relevant to each question was assigned an

[13] Of these 100 casefiles, 19 were online files only.

overall rating of quality – namely, 'high', 'moderate' or 'low'. Examples of these ratings are also provided in the table.

Table 2: Criteria used to assess the quality of JusticeLink data for answering the policy questions posed

Assessment of JusticeLink data quality	
Criteria used to assess data quality	**Definition**
Data accuracy	The JusticeLink data is a true reflection of the details of the case.
Data completeness	The data is recorded in all relevant instances (i.e. is not missing).
Data utility	The data can be viably and readily used to answer the policy question – either directly from the JusticeLink system in its raw form or after minimal modification. Note that data modification may include re-categorising the data or creating new variables based on multiple data fields/datasets. The knowledge and effort needed to modify the data was considered, such as knowledge of the JusticeLink system and of data manipulation techniques and statistical software.
Ratings of data quality based on above criteria	**Examples of rating (not exhaustive)**
High	Data accuracy and completeness are good and no/minimal data modification is needed.
Moderate	Data accuracy and completeness are good, but considerable data modification is needed. Data accuracy is good and no/minimal data modification is needed, but data completeness is uncertain. Data accuracy is good and no/minimal data modification is needed, but data is only complete for certain types of cases.
Low	Data accuracy and completeness are poor. Data accuracy and completeness are good for the data recorded, but the data is insufficiently detailed to be useful. Data accuracy is good (where data is recorded), but data completeness is poor (i.e. data is often missing). Data accuracy and completeness are only good in some cases, and considerable data modification is needed to report on these cases. Data accuracy and completeness are reasonable, but extensive data modification is needed.

Factors affecting data quality

The quality and utility of JusticeLink data 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. Broadly speaking, the reliability of different data points may be compromised in a number of discrete ways:

- limitations in the scope of information collected (e.g. on plaintiff and defendant type)
- how data or information is defined (e.g. definitions of claim types which are technical, ambiguous and may overlap)

- how data is entered onto JusticeLink (e.g. data being entered by many different parties and their representatives through e-filing and bulk filing, registry staff, judge's associates etc. with varying interest and skill in data accuracy)
- how data is stored
- how data is 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
- the need for continuous fixes and updates to JusticeLink as processes and data requirements change
- how data is analysed, cleaned and reported
- variation 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. Making available a data dictionary that clearly defines all the fields in JusticeLink and the corresponding data tables would improve consistency in the interpretation and reporting of JusticeLink data.

JusticeLink system design: implications for data analysis

A system first implemented for criminal matters

JusticeLink is the data system for NSW Courts, including the Supreme Court. While it was developed for both criminal and civil cases, JusticeLink was *first* implemented to capture and integrate case management data for criminal matters and became a defendant-driven system. The system was then further developed to process civil matters, but remains driven by the status of the defendant as opposed to the case or the plaintiff. So, for example, even when a civil case is closed on JusticeLink, the plaintiff will remain active. Critically, a defendant-driven system can make the recording of case management data for civil matters more difficult and subject to error.

There are also fields designed for and used in criminal matters that are not as critical to civil matters. One example is the 'outcome type' field which categorises orders as 'administrative, chamber and listing'. In criminal matters, if the matter is heard in court it *must* be entered as a 'listing' outcome type because it triggers other interfaces that JusticeLink is linked to (such as Police and Corrections systems). As civil data is not linked to any other interfaces and strict procedures are not required for this purpose, attention to, and therefore the quality of this data field in relation to civil matters is poorer.

Complex range of data fields and data limitations

JusticeLink is a complex data system, with information held in a number of different parts (e.g. case level data, proceeding-level data and participant-level data). At times, data (e.g. claim type or list type) may be entered once (e.g. against the first or substantive proceeding) but not repeated, or repeated accurately, for subsequent proceedings.[14] Similarly, a representative may be entered for some parties in a case but not all. In such instances, it is not clear if the one representative represented one, some or all of the parties, and if any of the parties were not represented. Given the range of questions asked in this project, the data provided will necessarily be extracted from different parts of the system. This adds an additional layer of complexity to the analysis and room for error at the point of extraction.

Additionally, there are particular features of JusticeLink that affect the quality of the data for analysis and review. Below we describe some of these features that affect a number of the 10 key questions posed at the beginning of the report.

Proceeding status

While information on JusticeLink is collated within a case, it is primarily organised around components or 'proceedings' within each case. A JusticeLink 'proceeding' generally commences with a filed document (such as a statement of claim, a cross-claim, an originating document, a notice of motion) and *may* end with an order. There may be more than one JusticeLink proceeding per case. Note that the operational definition of 'proceeding' in JusticeLink is different from the vernacular use of proceeding in the legal context.

There is a proceeding status field which includes values of 'case management', 'hearing', 'reserved judgment', 'dismissed', 'determined' and so on. If this proceeding status field has not been updated to reflect the actual progress of the matter (e.g. a matter which should have a 'hearing' status is still at 'case management'), then the options available to enter appropriate order data are also affected. For instance, if a *Corporations* list proceeding is in the status of 'case management' rather than 'hearing' status, then not all finalising orders are available for data entry. As a result, an inappropriate order may then be selected, as the required order (e.g. a finalising order) is not available to the data entry officer at that point.

Participant status

JusticeLink has a status field that is attached to participants and includes values of 'defended' and 'appearance' (as well as 'no appearance', 'non-enforceable', 'hearing', 'reserved judgment', 'referred to arbitration', 'stayed' etc.). However, when this field is updated on JusticeLink as the matter progresses, it overwrites previous statuses. Thus, while the field may initially indicate 'defended', this will be overwritten, for instance, when the status changes to 'hearing' (see Section 5).

Importantly, if the participant status has not been updated correctly on JusticeLink at the time an order is to be entered, the appropriate order type may not be available. For

[14] For instance, the claim type can default to an alphabetical list of options, if not carefully selected by the officer entering data.

instance, a defendant needs to be in 'hearing' status for a range of suitable final order types to be available. Thus, if a defendant is instead still in 'appearance' status, the number of order types will be restricted, which means that the correct final order type may not be able to be selected. This, in turn, affects the reliability of data on orders made (see Section 7).

In sum, if the proceeding and participant status are not updated correctly this has implications for data entry, which, in turn, will affect the reliability of data available for analysis.

Manually closed files

In reviewing the data, we found some inconsistencies in the data extracted from different fields or parts of JusticeLink. For instance, the date the case first closed reported in the data provided on 'proceedings' was not always accompanied by a 'finalising' order in the orders data. We saw some cases where only procedural orders were recorded in the substantive proceeding, yet the case had been closed.

Manual closure is typically required when completed cases are incorrectly left open in JusticeLink (due to the complexity of the JusticeLink system, prior data entry errors, poor data entry skill, misdirection of the paper file or any combination of these). When final orders are recorded correctly in a case that has been correctly maintained in JusticeLink, the case should close automatically.

Cases requiring manual closure are identified through the Registry's ongoing auditing of inactive, open cases. A case is manually closed by simply assigning a status of 'determined' to all open proceedings; there is no additional data entry of the finalising orders. This means that there is no input of extractable information about the finalisation type or method. From an analytical perspective, the manual closing of some files means that it is not always clear from the data which order or activity results in the case being finalised and closed.

No defendant

There are certain types of matters in the Supreme Court, such as applications, for which there is a plaintiff but no defendant.[15] However, from a data perspective, because there is no field or value to indicate 'no defendant', we can only identify these cases by inferring from the originating document type, claim type, and/or case name. This added to the challenge of matching the count of defendants across different datasets and differentiating between those cases with no defendant and those in which defendant information was missing.

Consolidated cases

Another reality that complicates the analysis of administrative court data is the consolidation of cases. When case consolidation occurs, related cases (each with their own unique casefile number) become integrated into a single case. **There was no way of identifying from the data provided which and how many cases may have been consolidated.** This is problematic because all data is extracted on the basis of a casefile number. For example, if in our sample of cases first closed in 2016 there was case number

[15] For convenience, throughout the report 'plaintiffs' refers to both plaintiffs and applicants, and 'defendants' refers to both defendants and respondents.

1,234, the data extracted on proceedings, participants, outcomes/orders, defences filed, and so on will be attributed to that case number (1,234). But, if this case was consolidated under case number 5,678, we would be missing data for the consolidated case. This means that important data on outcomes/orders and potentially also parties and representation for 1,234 (now 5,678) would be missing from the analysis because the data was not extracted for 5,678 as well. While we did not have time to examine the extent of the impact of consolidated cases, there were 2 cases in our random sample of 100 cases for the casefile analysis that were affected by consolidation. In the course of further data checking on JusticeLink, we also encountered other instances of consolidated cases. It is important to bear this in mind when reflecting on the reliability of data extracted from JusticeLink on the basis of casefile numbers.

How cases were selected and counted in this report

This report focuses on claim cases and applications under corporations law cases lodged in the Supreme Court and recorded as closed for the first time during 2016.[16] The following describes the selection of these cases. The selection of these cases for analysis aimed to balance the need to:

- best represent the activity of the Supreme Court and
- ensure comparability with the reports already completed on the Local and District Courts (where the analysis focused on claim proceedings only).

To begin with, the proceeding type 'probate pre-application' (N=27,011 proceedings) was excluded from our analyses (unless it was part of a case with a claim proceeding), as this proceeding type refers to the notices of intention to apply for probate, which must be published on the NSW Court Registry website.

Table 3: Number of proceedings per case, Supreme Court cases first closed in 2016

No. of proceedings per case	N	%	Cumulative %
1	5,608	76.2	76.2
2	900	12.2	88.5
3	387	5.3	93.7
4	193	2.6	96.4
5	100	1.4	97.7
6	62	0.8	98.6
7	24	0.3	98.9
8	30	0.4	99.3
9	17	0.2	99.5
10–26	34	0.5	100.0
Total	**7,355**	**100.0**	

Source: JusticeLink data.
Note: N=7,355 cases (with 11,272 proceedings). There were an additional 26,831 probate pre-applications and uncontested probate matters (with 27,011 proceedings) that are excluded from the table.

[16] Cases can be reopened for subsequent proceedings, such as further applications and/or costs or enforcement matters.

Remaining was information on 11,272 proceedings relating to 7,355 Supreme Court cases first closed in 2016. Of these 7,355 cases, 5,608 (76.2%) had one proceeding only. The remaining 1,747 (23.8%) cases had 2 or more proceedings (see Table 3).

In comparison to the lower courts, there is a wider range of proceeding types in the Supreme Court. Some proceedings, such as claims, cross-claims and applications under corporations law, usually concern the substantive issue in the case. Note that the JusticeLink proceeding type 'claim' may be commenced by a statement of claim or a summons (see Table A1 in Appendix 1 for selected cases by their initiating document).

Other proceedings are more procedural in nature. These include proceedings that sit within a case in which the substantive proceeding is a claim or an application under corporations law (e.g. notices of motion and generic proceedings). There are also proceedings that constitute unique cases in their own right on JusticeLink, but are also procedural in nature (e.g. application for request of service, application for mutual recognition, and in most cases, certificates).

As indicated in Table 4 there were 6,151 claim proceedings in Supreme Court cases closed for the first time in 2016. However, some cases had more than one claim proceeding (e.g. a claim and an amended claim, a superseded claim or a data error). Similarly, there were 1,383 proceedings for 'application under corporations law', but again, some cases had more than one of these proceeding types.

Table 4: Supreme Court proceedings for cases first closed in 2016

Proceeding type	Proceedings		Cases
	N	%	%
		N=11,272	N=7,355
Claim	**6,151**	54.6	79.6
Application under corporations law	**1,383**	12.3	14.1
Notice of motion civil	2,393	21.2	
Cross-claim	670	5.9	
Probate pre-application (part of contested case)	223	2	
Application for request of service	217	1.9	
Certificate	163	1.4	
Application for mutual recognition	76	0.7	
Generic proceeding	20	0.2	6.3
Probate/probate accounts	12	0.1	
Appeal	8	0.1	
Application examination under corporations law	2	0.0	
Summons for revocation/rescission of grant	2	0.0	
Application for subpoena or production order	1	0.0	
Guardianship application	1	0.0	
Total	**11,272**	**100.0**	**100.0**
Probate pre-applications (uncontested)	27,011		

Source: JusticeLink data, cases closed for the first time in the Supreme Court, 2016.

To understand the types of cases in the Supreme Court, we classified the 7,355 cases[17] first closed in 2016 according to their 'substantive' proceeding. To do this, one proceeding was chosen for each case, based on the following hierarchy in decreasing order:

- cases with at least one claim proceeding (a claim)
- cases with no claim proceeding but at least one application under corporations law proceeding (an application under corporations law)
- cases with at least one certificate proceeding (excluding those already counted above)
- cases with an application for request of service (none in the cases above)
- cases with an application for mutual recognition (none in the cases above)
- other cases.

As indicated by Tables 4 and 5, the 6,151 claim proceedings represented 5,852 unique cases, as some cases had multiple claim proceedings. We selected the last claim proceeding as the substantive proceeding for that case. These 5,852 cases involving claims constituted 79.6% of all of the 7,355 cases first closed in 2016. An additional 1,035 cases had at least one application under corporations law proceeding (but no claim proceeding). Together, these 6,887 cases involving a claim matter or an application under corporations law matter represent 93.6% of all cases first closed in 2016. Note also that although there were 670 cross-claim proceedings, all cases that had a cross-claim also had a claim or an application under corporations law and, thus, are already counted within the cases involving claims or applications under corporations law. The remaining cases included certificate matters and various other types of applications (see Table 5).

Table 5: Supreme Court cases first closed in 2016, by LJF classification based on substantive proceeding type

Proceeding type	Proceedings	LJF case classification[b]	Cases	Cases
	N	N	Cumulative N	Cumulative %
Claim	6,101	5,852	5,852	79.6
Application under corporations law	1,383	1,035	6,887	93.6
Cross-claim	670	0	6,887	93.6
Certificates	163	135	7,022	95.5
Application for request of service	217	217	7,239	98.4
Applications for mutual recognition	76	76	7,315	99.5
Other[a]	40	40	7,355	100.0

Source: JusticeLink data, cases closed for the first time in the Supreme Court in 2016.
Note: Probate pre-applications (N=27,011 proceedings in 26,831 cases) are excluded from the table and the analysis.
a Includes application for examination under corporations law, application for subpoena or production order, generic proceeding, probate, summons for revocation/rescission of grant, appeal.
Other proceedings such as notices of motions are included within the cases listed above.
b Based on substantive proceeding. See case selection process detailed in text.

[17] This figure excludes the uncontested probate pre-applications.

Compared to the lower courts, the selection of Supreme Court matters for analysis is complicated by:

- 24.9% of cases having multiple proceedings per case (including some with multiple claims)
- the relatively high proportion (20.4%) of cases that do not involve a 'claim'[18]
- the particular role of the Supreme Court in processing applications that are administrative in nature rather than litigation (e.g. registration of judgments given in other courts, mutual recognition for legal qualifications and uncontested applications for a grant of probate).

The following analyses therefore only included cases that had at least one claim or application under corporations law (N=6,887). They are described throughout this report as the **selected cases**. As noted above, these matters account for 93.7% of all Supreme Court civil cases first closed in 2016 and focused the analysis on those matters most likely to be case managed by the court.

Some of our analyses were based on only one proceeding for each case. In cases that have more than one claim/application proceeding, it is the last claim proceeding or the last application under corporations law proceeding that is used.[19] We refer to this proceeding throughout the report as the **'substantive proceeding'** in the case.

As certificate matters were excluded from the Local and District Court analyses, these have also been excluded here. Applications for request of service, applications for mutual recognition and the small number of other cases (see note to Table 5) were also excluded from this analysis. Decisions about what types of matters to include or exclude from any future analysis might differ from those made for this report.

Filing in the Supreme Court

Cases may be filed in hard copy at a Supreme Court registry, or they may be e-filed through the NSW Online Registry.[20] Overall, two-thirds (66.2%) of our selected cases were filed at a registry and 33.8% were filed online. As indicated in Table 6, this varied considerably by list. In the *Proceeds of crime* list, no selected cases were e-filed, while nearly 4 out of 5 (78.6%) of *Possession of land* list cases were filed online. Four out of 10 (40.8%) of *Corporations* list cases were filed online (including all applications within the corporations list).

It should be noted that while an originating process may be e-filed, the whole case may not proceed online. If listed, a paper file will be created.

[18] Compared to, for instance, cases finalised in the Local Court in 2014, where 96.8% of cases had one only proceeding, and 94.6% of cases were claim cases (see Forell, S & Mirrlees-Black, C 2016, *Data insights in civil justice: NSW Local Court*, Law and Justice Foundation of NSW, Sydney).

[19] This allows, for example, for final judgments for cases to be examined in relation to the last (e.g. amended) claim. Note, analyses based on a single proceeding in a case are only based on claim proceedings or application proceedings, never on the cross-claim proceeding, where there is one.

[20] The online registry supports the NSW Supreme, Land and Environment, District and Local Courts. See https://onlineregistry.lawlink.nsw.gov.au/content/

Table 6: Lodgement channel by list in Supreme Court selected cases

Division and list^	e-filed	Filed at registry	Total
	%	%	N
Common Law Division	**47.5**	**52.5**	**2,848**
Administrative law	8.9	91.1	135
Defamation	25.5	74.5	51
General	22.0	78.0	1,017
Possession of land	78.6	21.4	1,395
Proceeds of crime	0.0	100.0	99
Professional negligence	4.0	96.0	151
Equity Division	**24.2**	**75.8**	**4,017**
Commercial	10.0	90.0	229
Corporations	40.8	59.2	1,049
General – family provision	27.1	72.9	1,063
General – other	16.2	83.8	993
Probate	5.9	94.1	186
Protective	11.6	88.4	95
Real property	18.0	82.0	245
Technology and construction	3.7	96.3	134
Equity – other	4.3	95.7	23
Other/unclear	**4.5**	**95.5**	**22**
Total	**33.8**	**66.2**	**6,887**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016.
Note: N=6,887 proceedings reflecting the substantive proceeding (i.e. last claim or last application under corporations law proceeding).
^ Throughout this report, we have presented analysis on a summarised set of lists. Table M1 (in Appendix 1) details how JusticeLink lists have been combined.

The quality of data entered online

As NSW Courts, including the Supreme Court, move towards more online services,[21] increasing amounts of information will be entered directly by parties and/or their representatives. While this provides opportunities to better direct users to enter complete and accurate information (for instance, with the provision of drop down menus and required fields), there remains the challenge of ensuring that the information provided accurately reflects the details of the parties and the claim or application (such as claim type).

Specific comments about the quality of data entered online (as compared to that entered at the registry) are made where relevant in the following sections of this report. Overall, however, we note the importance of clear instructions and information for users about the type of information required and the potential need for some systematic quality checking of data entered.

[21] See Justice NSW Online services webpage.

1. What types of civil matters are finalised in the Supreme Court?

DATA QUALITY – HIGH (based on list type)
'List type' data is largely complete and accurate, and so provides a good overview of the nature of Supreme Court matters. We used list type over claim type as there are 157 UCPR claim types in the Supreme Court, making this a less useful field to describe and summarise the range of claims and other cases in the Supreme Court.

The business of each civil court or tribunal is defined in large part by the types of cases it handles. In our earlier reports on the Local Court and the District Court, we focused the analysis on claims only, as these comprised the clear majority of cases in these jurisdictions. In the Supreme Court, the picture is more complex, with a greater proportion of Supreme Court cases:

- involving multiple proceedings (23.8% of our selected cases)
- having no claim proceeding (20.4% of our selected cases).

Among the matters with no claim proceedings were 1,035 cases (14.1%) in which the substantive proceeding was an 'application under corporations law'. These can be substantial cases of an ongoing nature, and for this reason are included in our analyses.

The Supreme Court also deals with a range of other applications and proceeding types, which may be cases in their own right, but are largely procedural in nature. For reasons detailed in the previous section, these were excluded from our analysis.

Matter types: claim type versus list type

The types of cases dealt with by courts and tribunals can be described by claim type and/or by list type.

Claim type

'Claim type' on JusticeLink reflects the category recorded on the initiating document at the point of filing and any amendments made to this by registry staff.[22] When filing, plaintiffs are required to provide a Uniform Civil Procedure Rules (UCPR) claim type.[23] For claims filed online, there is a link to the UCPR rules to explain each of the categories. The UCPR Guide (p. 71) indicates that the claim type is requested for 'statistical purposes only'.

[22] Examples of initiating documents include *Statement of claim* and *Corporations Law Originating Process* (Form 2).

[23] Uniform Civil Procedure Rules (UCPR) Guide to completing the approved forms, Section 6. See http://www.ucprforms.justice.nsw.gov.au/Documents/ucpr%20guide%20section%206.pdf

There are 157 UCPR claim types specified for the Supreme Court in the *UCPR Guide to completing the approved forms*. The large number of, at times, very specific claim types[24] means that using claim type to summarise the matters heard in the Supreme Court would be unwieldy. Rather, 'list type' provides a better summary of the range of matters dealt with in this jurisdiction.

Lists

Supreme Court cases are assigned to 'lists'. Virtually all the selected cases in our analysis had list information recorded on JusticeLink (only 0.3% had missing data). Our comparison of JusticeLink data to our casefiles indicated that the list information appeared generally accurate. Note, however, that occasionally a case will change lists between filing and closure.

Excluding the Court of Appeal, the civil work of the Supreme Court is broadly divided between 9 Common Law Division lists (41.1% of the selected cases) and 15 Equity Division lists (58.3%). Throughout this report, we have presented analysis on a summarised set of lists, as displayed in Table 7. Table M1 (in Appendix 1) details how JusticeLink lists have been combined to produce the summarised lists used in the present report. Note that, for ease of reporting, the list categories used in the present report combine some small lists appearing on JusticeLink.[25]

[24] Very specific claim types include those in the *Corporations* list, which reflect sections in relevant legislation (e.g. Oppressive conduct, s.233; Winding up – other ground, s.461).

[25] Table A2 (in Appendix 2) expands on Table 7 to provide a breakdown of the selected cases by each list that appears on JusticeLink.

Table 7: Profile of Supreme Court selected cases, by list

Division and list	Cases	
	N	%
Common Law Division	**2,848**	**41.1**
Administrative law	135	2.0
Defamation	51	0.7
General	1,017	14.8
Possession of land	1,395	20.3
Proceeds of crime	99	1.4
Professional negligence	151	2.2
Equity Division	**4,017**	**58.3**
Commercial	229	3.3
Corporations	1,049	15.2
General – family provision	1,063	15.4
General – other	993	14.4
Probate	186	2.7
Protective	95	1.4
Real property	245	3.6
Technology and construction	134	1.9
Equity – other	23	0.3
Other/unclear	**22**	**0.3**
Total	**6,887**	**100.0**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. List type is based on the list recorded for the substantive proceeding.

Table 7 breaks down the selected cases by summarised list. The highest proportions of cases were in:

- the *Possession of land* list (20.3%) and the *General* list (14.8%) in the Common Law Division
- the *Corporations* list (15.2%, largely applications under corporations law), *General – family provision* (15.4%) and *General – other* (14.4%) in the Equity Division.[26]

Claim types within the Common Law and Equity general lists

To better understand the sorts of claims that are heard in the *Common law – general* and *Equity – general – other* lists, we summarise below the main claim types that fell under each list based on our selected cases.

In the *Common law – general* list, there were 33 unique claim types, 29.9% of which were personal injury-related claims. A further 20.6% were money claims and 12.7% were 'other'

[26] There are separate lists for certificate matters and applications for mutual recognition, which are not included in this analysis.

claims. Appeals, including Local Court, other and costs assessment appeals, accounted for 12.6% of claims, and transfers from the District Court, a further 8.8% of claims.

There were a similar number of unique claim types in the *Equity – general – other* list (N=35). The highest proportions of claim types were 'declaration (single remedy)' at 21.8% and 'other'. 'Trust/trustees' accounted for 14.8% of claims, and 10.3% of claims were for 'breach of contract', which included both employment-related and non-employment-related contract breaches. A further 5.5% were money claims.

2. What is the monetary value of Supreme Court cases?

DATA QUALITY – LOW
An amount sought was only recorded for a subset of the selected cases that involved a specific monetary sum, and these were largely in one list. There was also a high proportion of $0.00 values. Where the amount was missing or was $0.00, it was not possible to assess whether a relevant amount was not entered, or whether the case did not involve a monetary claim. Further, there is no flag to indicate whether the amounts specified were liquidated or unliquidated. Given these limitations, JusticeLink data cannot be used to describe the overall monetary value of Supreme Court cases. These caveats regarding the underlying JusticeLink data should be kept in mind when referring to the data in this section.

Supreme Court cases cover a wide range of claims and applications, including those seeking payment of money in some way. These include cases seeking:

- no monetary relief (other than costs), such as seeking an apology in a defamation case, the possession of land or a declaration to be made
- payment of a liquidated amount, that is, seeking payment of a known, specific amount, such as a known debt plus interest
- payment of an unliquidated amount, that is, seeking payment of an amount to be determined by the court-based on evidence put by the parties, such as damages in a personal injury case
- cases that combine any or all of the above.

Data on 'amounts sought' can only be gained for cases seeking the payment of a liquidated amount, at least as part of the relief sought. The amount sought can be compared to the judgment amount (if the court makes an order for payment) and this is discussed further in Section 9.

The following analysis examined data available on the monetary amounts sought, in the substantive proceeding of the 'selected cases'. The analysis excluded amounts sought in any cross-claim proceedings.

Definition and quality of data on monetary amount sought

The JusticeLink data provided to us included a field specifying a total monetary amount *sought* in dollars. The amount specified is not split between plaintiffs and defendants.

This field on amount sought is available for all matters, even though it is *not applicable* to those cases in which no monetary amount was sought. Generally, it appeared that

unliquidated claims and non-monetary claims are given a value of $0 or left as a blank field. It is possible that the non-zero dollar amounts recorded on JusticeLink may therefore generally reflect liquidated amounts. However, there is no field in JusticeLink that clearly records whether each claim is liquidated, unliquidated and/or non-monetary. Thus, we could not be sure whether some unliquidated claims were included among the monetary amounts recorded or whether some liquidated claims were missing.

The analyses reported in Tables 8 and 9 and Figure 3 compare the monetary amount specified against the substantive proceeding for each claim case in our selected cases. As monetary amount was not recorded for any application under corporations law cases, these cases were excluded from these analyses. Claim amounts sought which result in a default judgment amount were included among those reported.

Table 8 indicates that an amount sought was only recorded in 21.6% of all Supreme Court claim cases closed in 2016. The extent to which the remaining 78.4% of claims without a monetary amount recorded accurately reflect unliquidated and/or non-monetary claims was not clear from the JusticeLink data.

Table 8: Amount sought recorded on JusticeLink in Supreme Court selected cases – claim cases only

Amount sought	All claim cases		Claim cases with amount sought recorded
		N=5,852	N=1,265
	N	%	%
Blank	2,741	46.8	na
$0 recorded	1,846	31.5	na
$5,001 – $100,000	121	2.1	9.6
$100,001 – $200,000	220	3.8	17.4
$200,001 – $400,000	461	7.9	36.4
$400,001 – $600,000	182	3.1	14.4
$600,001 – $800,000	88	1.5	7.0
$800,001 – $1,000,000	49	0.8	3.9
$1,000,001 – $2,000,000	91	1.6	7.2
$2,000,001 – $3,000,000	23	0.4	1.8
$3,000,001 – $4,000,000	6	0.1	0.5
$4,000,001 – $5,000,000	8	0.1	0.6
$5,000,001 – $10,000,000	13	0.2	1.0
$10,000,001+	3	0.1	0.2

Source: JusticeLink data on Supreme Court cases involving a claim matter closed for the first time in 2016. Amount sought is based on the amount entered for the substantive proceeding of these cases.
Note: All cases involving an application under corporations law matter had a 'blank' for the amount sought and have been excluded from this table. 'Na' indicates not applicable.

Value of Supreme Court claims

Table 8 also breaks down the amount sought for those claim cases with a monetary, non-zero claim amount recorded. Over half of these claim cases had an amount sought between $100,000 and $400,000. If it were possible using JusticeLink data to include the amounts sought in all unliquidated claims in these analyses, the figures would likely look substantially different.

Table 9 provides the mean and median amount sought by list for the claim cases with amount sought recorded. The mean and median amounts are replaced with an * for lists in which less than 5 claim cases had an amount specified. Table 9 first indicates that an amount was most commonly specified in the *Possession of land* list, which largely concerns repossession following mortgage default, for specific sums of money. Approximately seven-tenths of the claim cases in this list had an amount sought recorded, with the mean amount being $361,529 and the median amount being $278,059 for these 988 cases.

A monetary amount was also specified in nearly 20% of *Common law – general* list claims, with a mean amount for these 194 claim cases of $1,821,396 and a median amount of over $1,056,156.

Table 9: Amount sought by list in Supreme Court selected cases – claim cases only

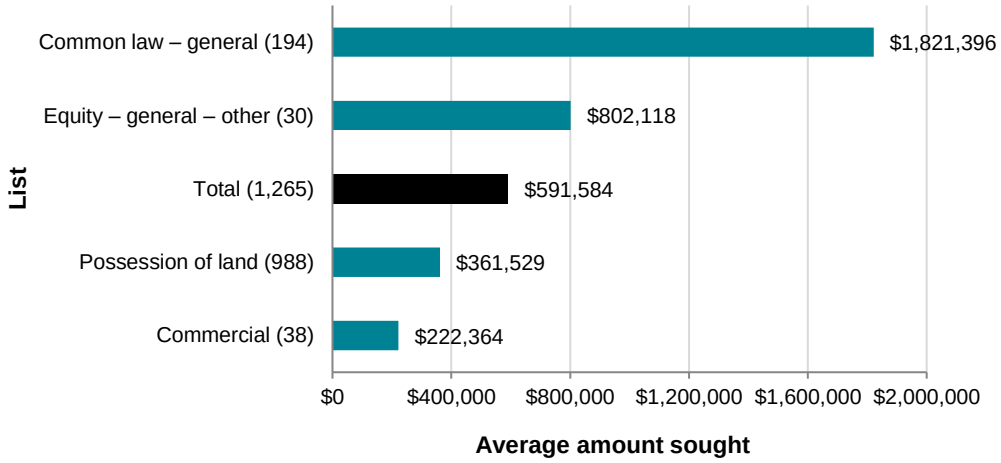
Division and list	All claim cases	Claim cases with amount sought recorded		Amount sought	
	N	N	%	Mean	Median
Common Law Division					
Administrative law	135	0	0.0	na	na
Defamation	51	0	0.0	na	na
General	1,017	194	19.1	$1,821,396	$1,056,156
Possession of land	1,395	988	70.8	$361,529	$278,059
Proceeds of crime	99	0	0.0	na	na
Professional negligence	151	4	2.6	*	*
Equity Division					
Commercial	229	38	16.6	$222,364	$135,325
Corporations	35	1	2.9	*	*
General – family provision	1,063	0	0.0	na	na
General – other	992	30	3.0	$802,118	$291,294
Probate	186	0	0.0	na	na
Protective	95	0	0.0	na	na
Real property	245	3	1.2	*	*
Technology and construction	134	4	3.0	*	*
Equity – other	23	2	8.7	*	*
Other/unclear					
Other/unclear	2	1	50.0	*	*
Total	**5,852**	**1,265**	**21.6**	**$591,584**	**$306,814**

Source: JusticeLink data on Supreme Court cases involving a claim matter closed for the first time in 2016. Claim amount is based on the claim amount entered for the substantive proceeding of these cases.
Note: N=5,582 claims cases, including 1,265 with a claim amount entered. All cases involving an application under corporations law matter are excluded from the table as they had 'blank' claim amounts. As the data is skewed, an alternative to the mean is the median which indicates the 'typical' claim amount. 'Na' indicates not applicable.
* Figure excluded where the number of cases in a list with a claim amount is less than 5.

Figure 3 provides an overview of the mean amount sought for the claim cases examined in Table 9 that had a claim amount specified on JusticeLink. The number of claim cases within lists for which an amount sought was specified is indicated in brackets next to the list type. The bar shows the average of those amounts rounded to the nearest thousand.[27]

[27] The figure only includes lists which had at least 5 claim cases with an amount sought specified.

Figure 3: Average (mean) amount sought for Supreme Court selected cases by list – claim cases with an amount recorded only



Source: JusticeLink data on Supreme Court cases involving a claim matter closed for the first time in 2016. Claim amount is based on the amount entered for the substantive proceeding of these cases.
Note: The number next to the list name counts cases in the list with an amount specified. Lists with <5 cases with an amount sought specified have been excluded.
N=1,265 claim cases with a claim amount entered. All cases involving an application under corporations law matter are excluded from the figure as they had 'blank' claim amounts. No claim amounts were specified in the *Administrative law*, *Defamation*, *Proceeds of crime*, *Equity – general – family provision*, *Probate* and *Protective* lists.

Assessing the 'value' of Supreme Court claims

It is likely that the average value of claim amount sought would be significantly different if (ballpark) unliquidated claim amounts sought were routinely recorded. Without these claim amounts included, JusticeLink data can only provide an incomplete picture of the monetary value of claims sought in Supreme Court.

The value of Supreme Court claims may also be considered in terms of amounts *awarded*. However, as will be discussed in Section 9, JusticeLink data also do not provide a complete picture of the monetary value of claims awarded in the Supreme Court, as the monetary value awarded is only recorded for certain order types and also excludes awards for any matters settled away from the court (not included in a consent judgment) and/or not disclosed. Further, although some orders made in the Supreme Court may not concern a monetary amount, and hence, will not have an awarded amount, they still concern or affect assets of value (e.g. houses, businesses).

Finally, as a higher proportion of cases in the Supreme Court than the Local and District Courts involve unliquidated amounts or claims for which a monetary amount is *not* relevant, data on amount sought **does not** appear to be a reliable indicator of the value of Supreme Court claims.

Improving information about the amounts sought

The data on amounts sought would be improved by clearly differentiating between claims that are unliquidated (or include an unliquidated amount), those that are solely liquidated (as appears to be the approach taken with the new e-filing systems) and those for which a

monetary amount is not sought. In addition, any liquidated amount sought should be required to be transcribed onto JusticeLink.

In the JusticeLink data provided to us there was an additional variable called 'claim group', which groups amounts sought into categories (e.g. 1_group_5000, 2_group_10000, 3_group_20000 etc.). We did not use the 'claim group' variable because it was problematic in that it did not separate non-monetary claims ($0s or blanks) from small claims (under $5,000), but placed them together in the '1_group_5000' category. Clearly, it would be better to have a separate category for non-monetary claims as opposed to small claims.

3. Who is taking action against whom in the Supreme Court?

DATA QUALITY – LOW
JusticeLink provides generally accurate and complete data on whether plaintiffs and defendants are individuals or organisations. However, there is no further breakdown of entity type to enable a more complete understanding of who is taking action against whom in the Supreme Court. Thus, it is not possible to determine types of organisations directly from the aggregate data. Considerable coding work was required to categorise the data into more specific entity types provided in this report. Current data on ABN/ACN is poor, both incomplete and inaccurate.

Information about who is taking action against whom in each civil jurisdiction in NSW is critical for designing a client-centred justice system. It is important to know, for instance: What types of claims do individuals bring against other individuals, or businesses against businesses? What types of businesses use the justice system to resolve what types of disputes? How frequently and for what types of claims are government agencies taking action or subject to civil action, and are these predominantly against individuals?

Definition and quality of data on plaintiffs and defendants

Currently, the following information about plaintiffs and defendants can be captured on JusticeLink:

- names (person or business) and trading name
- Australian Business Number (ABN) and/or Australian Company Number (ACN) (only required for plaintiffs if e-filing)
- addresses and postcodes (of parties and/or their representative)
- whether each party is an ‘individual’ or an ‘organisation’ and whether each party is ‘corporate’ or ‘non-corporate’.

The completeness and quality of data in these fields varies. We noted that parties’ addresses are often not entered on JusticeLink or only their lawyers’ addresses are entered.

Individual or organisation?

JusticeLink contains two data fields that primarily relate to the calculation of fees: entity status, which categorises parties as individuals or organisations, and a field of ‘corporate/non-corporate’.

If plaintiffs file on paper, parties are classified as individual or organisation by registry staff entering data onto JusticeLink.[28] When e-filing, the plaintiff is asked to identify each plaintiff and defendant as an individual or organisation. Noting that the 'e-Registry' website and process is shared by the Local, District, Supreme and Land and Environment Courts, there appears to be no guidance in the e-filing process itself as to: a) what types of entities should be entered as an 'individual' and which should be entered as an 'organisation' and b) the purpose for collecting this information.[29]

Parties are then identified as 'corporate' or 'non-corporate' for the purpose of calculating the filing fees. Those 'individuals' e-filing are specifically asked if the 'action is being commenced by a corporation in the name of an individual (for example, an insurance company)' so that the corporate fee rate can then be applied.

Corporate or non-corporate?

Civil procedure regulations stipulate two fee rates: a standard (non-corporate) rate and a corporation (corporate) rate. Generally, individuals pay a non-corporate rate and organisations pay a corporate rate. However, as illustrated in Table 10 below, the picture is not as simple as this. Notable exceptions are:

- 'individuals' who pay the corporate rate, such as corporations pursuing a claim in the name of a natural person (e.g. an insurer or a debt collector)
- 'organisations' that pay the non-corporate rate, such as NSW and Commonwealth Government agencies, religious and charitable organisations and corporations with a turnover of less than $200,000.

[28] The Uniform Civil Procedure Rules (UCPR) forms do not request this information from the plaintiff.

[29] See https://onlineregistry.lawlink.nsw.gov.au/content/

Table 10: Examples of entities categorised as 'corporate' versus 'non-corporate' according to the Court Services Procedure Guide (2015), by categories of 'individual' or 'organisation' used in this analysis

	Corporate rate^	Non-corporate (standard rate)
Individual	• A corporation pursuing claim in the name of a natural person (e.g. insurer).[30]	• Private citizen in own capacity • Individual executors • 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 • 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 of NSW • State government departments • Local councils (before 1/7/15) • NSW Ministerial Corporation • State Rail Authority Coal Mines Board • Commonwealth government departments or agencies • Interstate government bodies • *[Sole or small business owner?]* • *[Partners in partnerships?]*

^ Corporations defined by s 57A of *Corporations Act 2001* (Cth).
'Corporate' and 'non-corporate', as defined by the 'Court Services Procedure Guide (2015): Fees' (Supreme Court website). It is unclear how parties in italics are classified.

Under the 'non-corporate' rate column, sole or small business owners and business partners are listed twice and in italics: as individuals and as organisations. This is to illustrate that it is not clear in which of these two categories they belong.

Complexity and completeness of entity data

As noted earlier, civil cases in the Supreme Court are generally more complex to analyse than civil matters in the lower courts due to: a) the higher proportion of matters with multiple proceedings and b) the greater variety of matter types (including claim type matters and 'applications').

[30] The JusticeLink user guide (p. 28) states, in an example of an individual plaintiff creating a statement of claim, that: 'The Fee Debtor Type dropdown list defaults to Non-Corporate, change to Corporate if required (for Right of Subrogation)'.

Numbers of litigants adds a further layer of complexity. Some cases, such as certain applications, may not have a defendant. However, in the Supreme Court there is also a higher proportion of matters with multiple plaintiffs, and even more commonly, multiple defendants. In addition, some parties are only recorded against some of the proceedings within the case. And more challenging again, in some cases, a person may be listed more than once as a party, in circumstances where they are both an individual and a business or organisation.

Reflecting the complexity of the cases and how they are recorded, entity-related data extracted for this analysis was provided in multiple datasets. We noted that information about some parties appeared in some datasets but not others. For this reason, *there was data missing from our analysis that may be available on JusticeLink*, but was not provided to us. Notably, as discussed below, it was difficult to separate matters in which there was no defendant from matters in which defendant information was missing. Missing data is reported in the table notes and discussed in text where relevant.

A flag or other indicator of cases that, due to their nature, do not have any defendants would assist in this regard.

Supreme Court plaintiffs and defendants: JusticeLink categories

Parties in the Supreme Court include plaintiffs and applicants as well as defendants and respondents. For ease of reference, we use *plaintiffs* to refer to plaintiffs and applicants, and we use *defendants* to refer to defendants and respondents.

As the same plaintiffs and defendants may appear in multiple proceedings across a case, we focused the following analysis on those litigants involved in the substantive proceeding of the case.

Number of plaintiffs and defendants per substantive proceeding

Overall, JusticeLink data indicated that there was more than one plaintiff listed in the substantive proceeding of 11.5% of the selected cases and more than one defendant in 37.9% of these proceedings. In 4.9% of the substantive proceedings there were four or more defendants recorded (see Table 11).

Care needs to be taken in understanding this data. As noted above, multiple plaintiffs or defendants in the data taken at face value suggest that there was more than one distinct person and/or organisational entity bringing a case or responding to a case. However, in some cases, a single entity may have been listed and counted twice: for instance, once as an individual and once as an organisation (e.g. the director of a company). It is not possible to differentiate between these two possibilities at the aggregate data level.

Noting the above, ‘multiple’ *plaintiffs* for our selected cases were more common in the Equity Division (16%) compared to the Common Law Division (5.2%), but multiple *defendants* were more common in the Common Law Division (42.7%) compared to the Equity Division (34.4%).

Table 11: Number of plaintiffs and defendants by division for selected Supreme Court cases

Division	Participant type	Cases with party recorded	Number of plaintiffs/defendants			
			One	Two	Three	Four +
		N	%	%	%	%
Common Law Division						
	Plaintiff	2,847	94.8	3.6	1.0	0.5
	Defendant	2,798	57.3	31.5	7.1	4.1
Equity Division						
	Plaintiff	4,012	84.0	11.0	3.0	2.0
	Defendant	3,831	65.6	21.9	6.9	5.6
Other/unclear						
	Plaintiff	22	81.8	13.6	0.0	4.5
	Defendant	15	66.7	13.3	20.0	0.0
Total	**Plaintiff**	**6,881**	**88.5**	**8.0**	**2.2**	**1.4**
	Defendant	**6,644**	**62.1**	**25.9**	**7.1**	**4.9**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Data is presented on all first plaintiffs and first defendants in the substantive proceeding of these selected cases.
Note: N=6,887 selected cases. Plaintiff details were missing for 6 of these cases and details of defendants were missing for 243 cases.

Table A3 in Appendix 2 indicates that for our selected cases multiple plaintiffs were most common in the *Real property* (24.1% of these cases), *Probate* (23.5%) and *Equity – general – other* (20.1%) lists. Multiple defendants were most common in the *Administrative law* (72.9%), *Defamation* (60.0%), *Equity – general – other* (56.1%) and *Technology and construction* (54.5%) lists.

Cases with no plaintiffs or defendants

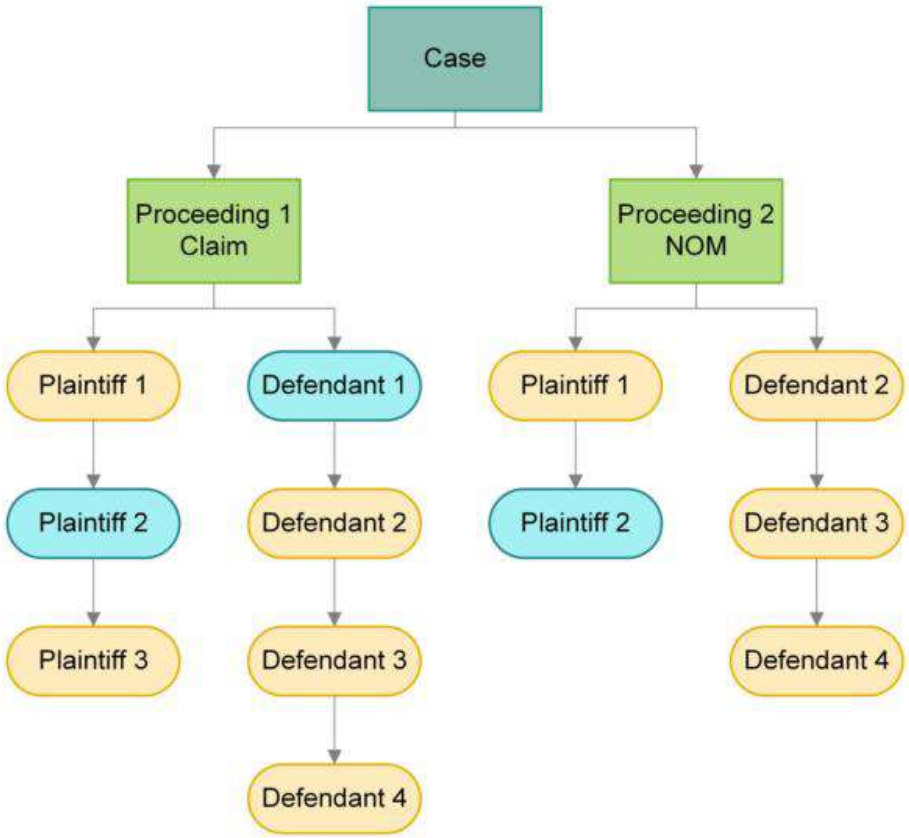
As indicated in the notes to Table 11 above, details of a plaintiff were missing in the substantive proceeding in 6 (0.1%) of the selected cases, and details of a defendant in 243 (3.5%) of these cases. However, in the remaining 146 cases, information on the defendant name and entity status was missing from the proceeding in the data provided. We found that, in most cases, the information was available on JusticeLink but it was likely missed in the data extract provided because the litigant information was entered into (and drawn from) a different part of the system (e.g. recorded against a different proceeding or at case level).

JusticeLink plaintiff and defendant types

As noted above, there may be more than one plaintiff or (more commonly) more than one defendant recorded on JusticeLink in the selected cases. While this generally indicates a number of distinct people or entities bringing or responding to the case, it may also include instances of the same person in more than one role (e.g. as an individual and as the director of a company). In this section we focus only on the first plaintiff and first defendant

in the substantive proceeding of each case. Importantly, a different picture may result from an analysis of *all* plaintiffs and *all* defendants in the substantive proceeding, and more broadly, from an analysis of all litigants in the case. A complication with this broader analysis is the risk of counting the same litigant more than once, when their details are repeated against further proceedings (e.g. Plaintiffs 1 and 2 in Figure 4). The choice of which to examine depends upon the policy question of interest.

Figure 4: Example of plaintiff and defendant profile in a case



Legend

The only information recorded consistently on JusticeLink about the parties, apart from their names and contact details, is whether they are an ‘individual’ or an ‘organisation’, and whether they are ‘corporate’ or ‘non-corporate’.

Table 12 indicates that in the substantive proceeding of the selected cases:

- half of all first plaintiffs (50.0%) were recorded as individuals, nearly all of which were identified as 'non-corporate'
- 50.0% of first plaintiffs were recorded as organisations, the clear majority of which were identified as 'corporate' (46.4% of all first plaintiffs)
- 61.5% of first defendants were identified as individuals and non-corporate, and 38.5% were identified as organisations, the vast majority of which were corporate (36.9% of all first defendants).

As noted in our review of District Court civil data, an insurer may sue or defend a case in the name of the insured, and thereby appear in the data as an 'individual'. Further analysis is required to explore whether this as also an issue in the Supreme Court.

Table 12: JusticeLink first plaintiff and defendant types, Supreme Court selected cases

JusticeLink entity type	First plaintiffs		First defendants	
	%	N	%	N
Individual	50.0	3,437	61.5	4,062
Corporate	0.3	18	0.2	11
Non-corporate	49.7	3,419	61.4	4,051
Organisation	50.0	3,439	38.5	2,539
Corporate	46.4	3,190	36.9	2,434
Non-corporate	3.6	249	1.6	105
Total	**100.0**	**6,876**	**100.0**	**6,601**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on first plaintiffs and first defendants in the substantive proceeding of these selected cases.
Note: N=6,887 substantive proceedings for the selected cases. Data was missing for 11 first plaintiffs and 286 first defendants.

Again based on the substantive proceeding of selected cases, Table 13 indicates that the types of entities recorded as first plaintiffs and first defendants varied considerably by list. More than 90.0% of first plaintiffs were individuals in the Common Law *Professional negligence* and *Defamation* lists, and in the *Equity – general – family provision*, *Probate* and *Protective* lists. More than 90.0% of first plaintiffs were organisations in the *Possession of land* and the *Proceeds of crime* lists.

Individuals comprise more than 90.0% of first defendants in the Common Law *Possession of land* and the *Proceeds of crime* lists and the *Equity – general – family provision* and *Probate* lists.

Table 13: JusticeLink first plaintiff and defendant types by list, Supreme Court selected cases

Division and list	First plaintiff		First defendant	
	Individual	Organisation	Individual	Organisation
	N=3,437	N=3,439	N=4,062	N=2,539
	%	%	%	%
Common Law Division				
Administrative law	61.5	38.5	38.5	61.5
Defamation	94.1	5.9	22.0	78.0
General	61.6	38.4	44.5	55.5
Possession of land	5.7	94.3	94.7	5.3
Proceeds of crime	3.0	97.0	98.8	1.2
Professional negligence	90.7	9.3	59.2	40.8
Equity Division				
Commercial	18.3	81.7	43.3	56.7
Corporations	23.3	76.7	11.0	89.0
General – family provision	100.0	0.0	95.3	4.7
General – other	66.7	33.3	51.4	48.6
Probate	96.7	3.3	95.8	4.2
Protective	98.9	1.1	87.1	12.9
Real property	60.5	39.5	65.1	34.9
Technology and construction	12.7	87.3	12.1	87.9
Equity – other	30.4	69.6	26.1	73.9
Other/unclear				
Other/unclear	54.5	45.5	20.0	80.0
Total	**50.0**	**50.0**	**61.5**	**38.5**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on first plaintiffs and first defendants in the substantive proceeding of these selected cases.
Note: N=6,887 substantive proceedings for the selected cases. Data was missing for 11 first plaintiffs and 286 first defendants.

Types of entities in the Supreme Court

To better understand the range of entity types involved in Supreme Court cases – and to illustrate the value of more granulated data categories – we took a random sample of 1,000 cases from our selected cases.

We devised a classification of entity types and used a coding scheme to classify all plaintiffs and all defendants in the substantive proceeding of these 1,000 cases into specific entity categories. To code entity types, we drew on information in multiple fields in the JusticeLink data provided to us (including ABN, ACN and litigant name), further information on the JusticeLink database and information on websites (e.g. to determine the nature of particular businesses or organisations).

For convenience, this sample of 1,000 is referred to as the '1,000 cases' throughout the report, and the coded entities as the 'LJF entity types'.

Below we report analyses based on only the first listed plaintiff and first listed defendant in the substantive proceeding, then based on all plaintiffs and defendants in this proceeding.

Table 14 indicates that, in the substantive proceeding of these 1,000 cases:

- 48.7% of first plaintiffs and 58.2% of first defendants were individuals[31]
- 42.9% of first plaintiffs were businesses as were 25.9% of defendants
- a relatively small proportion (6.1%) of first plaintiffs were government agencies as were 7.5% of first defendants
- 2.2% of first plaintiffs and 2.7% of first defendants were other entity types including non-government organisations and strata owners.

There was no party specified as a first defendant in 3.4% of cases. These were application type matters in which there was no defendant.

When looking at all plaintiffs and defendants in these 1,000 cases, there was a higher proportion of individuals as both plaintiffs (50.8% of all plaintiffs) and defendants (64.0% of all defendants).

Table 14: LJF entity type in 1,000 Supreme Court cases

LJF entity type	First plaintiff	All plaintiffs	First defendant	All defendants
	N=1,000	N=1,212	N=1,000	N=1,849
	%	%	%	%
Individual	48.7	50.8	58.2	64.0
Business	42.9	41.9	28.2	25.9
Government	6.1	5.0	7.5	6.4
Other	2.2	2.1	2.7	1.9
No party specified	0.1	0.1	3.4	1.8
Total	**100.0**	**100.0**	**100.0**	**100.0**

Source: LJF entity coding. Based on a random sample of 1,000 of all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Plaintiffs and defendants recorded in the substantive proceeding were classified according to LJF entity coding.

Table 15 divides these categories further into 15 entity codes, including a 'no party specified' category.[32]

Based on the 1,000 cases with LJF entity coding, Table 15 indicates NSW Government agencies comprised 3.1% of all first plaintiffs and 5.6% of all first defendants, while

[31] In our analysis of District Court data we noted that, as the UCPR rules do not require an insurer to sue in their own name, insurers may sue in the name of the individual. In the type of analysis above, insurers are therefore not visible in the data, as in these cases, they will be counted against 'individuals' in the data.

[32] An example of a case for which we coded entity type as 'no party specified' was an application under corporations law case with the case title 'in the matter of…', and no litigant recorded in the substantive proceeding.

Commonwealth Government agencies accounted for 2.6% of first plaintiffs and 1.3% of first defendants.

Within the business category, banks, finance and loan providers were the most common first plaintiffs (20.1%), while 'other business' comprised 13.7% of first defendants, including transport, manufacturing and retail/wholesale businesses.

Detailed entity categories for *all* plaintiffs and *all* defendants in the substantive proceeding are also provided in Table 15.

Table 15: LJF coding of detailed entity types in 1,000 Supreme Court cases

LJF entity type	First plaintiff	All plaintiffs	First defendant	All defendants
	N=1,000	N=1,212	N=1,000	N=1,849
	%	%	%	%
Individual	47.3	49.0	56.8	62.2
Individual by tutor/guardian	1.2	1.6	0.3	0.2
Local council	0.4	0.3	0.6	0.5
NSW Government/agency	3.1	2.6	5.6	4.9
Commonwealth Government	2.6	2.1	1.3	1.0
Business: bank/finance/loan provider	20.1	16.8	2.5	2.7
Business: construction/property related	5.4	6.8	9.6	8.2
Business: liquidator/financial administrator	1.1	2.0	0.2	0.1
Business: insurance company	2.9	2.4	2.2	2.4
Business: other	13.4	13.9	13.7	12.4
NGO/interest group	0.4	0.3	1.6	0.9
Strata owner/manager/body/ corporation	1.0	0.9	0.1	0.2
Executor	0.2	0.2	1.1	1.6
Other	0.8	0.9	1.0	0.9
Party not specified	0.1	0.1	3.4	1.8
Total	**100.0**	**100.0**	**100.0**	**100.0**

Source: LJF entity coding. Based on a random sample of 1,000 of all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Plaintiffs and defendants recorded in the substantive proceeding were classified according to LJF entity coding.

LJF categories compared to JusticeLink categories

The LJF entity coding of the 1,000 cases also enabled us to review how accurately the JusticeLink categories of 'individual' and 'organisation' are being applied, by comparing the JusticeLink data in the entity field to the LJF entity coding based on multiple sources of information.

We identified parties as 'organisations' on the basis that they had provided:

- an ABN or ACN
- a company or other organisational name as their name and/or 'Pty Ltd' or 'Ltd' as part of their name, or
- 'trading as' either within their name or in the 'trading as' field.

To code parties into specific entity types, such as specific types of business, we used, where necessary, the internet to determine the nature of each business. As noted earlier, it was not clear whether some entity types should be coded as individuals or organisations, in particular, small businesses, sole traders, partnerships and professionals (see italicised entity types in Table 10).

Note that JusticeLink data on defendant entity was missing for 43 cases within our sample, even though we were able to identify most of these defendants in our detailed review of 1,000 cases. These cases missing JusticeLink entity information for the defendant included just over half with no defendant and half in which defendant information was missing in the data provided to us. Defendant information was taken where possible from the case name.

Based on the 1,000 cases, there was high agreement between the JusticeLink entity field and our coding of entities into individuals versus organisations (see Table 16). Of the first plaintiffs, 97.4% were identified as individuals according to both the entity field and our coding, and only 1.6% were identified as individuals in the entity field but as businesses by our coding (e.g. councils, government bodies or utility services). Among first defendants identified as individuals in the entity field, 96.4% were also identified as individuals by our coding. No first plaintiffs or first defendants recorded as 'organisations' in the JusticeLink entity field were identified as 'individuals' by our coding.

Table 16 also indicates that 84.2% of first plaintiffs identified in the JusticeLink entity field as organisations were businesses or companies, while 12.0% were government agencies or departments. Looking at first defendants, 74.1% identified in the JusticeLink entity field as organisations were businesses or companies, while 19.2% were government agencies or departments.

Table 16: JusticeLink categories for 'individual' and 'organisation' compared to LJF entity coding in 1,000 Supreme Court cases

	JusticeLink entity type		
LJF entity type	**Individual**	**Organisation**	**Missing**
	%	%	%
First plaintiffs	**N=500**	**N=500**	**N=0**
Individual	97.4	0.0	-
Business	1.6	84.2	-
Government	0.2	12.0	-
Other	0.8	3.6	-
No party specified	0.0	0.2	-
First defendants	**N=582**	**N=375**	**N=43**
Individual	96.4	0.0	48.8
Business	0.7	74.1	0.0
Government	0.5	19.2	0.0
Other	0.5	6.4	0.0
No party specified	1.9	0.3	51.2

Source: JusticeLink data and LJF entity coding. Based on a random sample of 1,000 of all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Plaintiffs and defendants recorded in the substantive proceeding were classified according to LJF entity coding. Analysis was based on first plaintiffs and first defendants in the substantive proceeding.

Who is taking action against whom in the Supreme Court?

Based on our coding of the 1,000 cases, we were also able to explore against whom different types of entities were taking action. Table 17 indicates that, based on first plaintiff and first defendant, actions in the Supreme Court most commonly involved:

- individuals taking action against other individuals (29.6% of cases)
- businesses taking action against individuals (23.8%)
- businesses taking action against businesses (15.9%)
- individuals taking action against businesses (10.3%)

In 5.6% of the 1,000 cases reviewed, individuals were taking action against a government agency and in 4.1% the reverse was the case.

Table 17: LJF entity type in 1,000 Supreme Court cases

First plaintiff type	First defendant type					
	Individual	Business	Government	Other	Not specified	All first defendants
	% of cases					
Individual	29.6	10.3	5.6	1.9	1.3	**48.7**
Business	23.8	15.9	1.1	0.6	1.5	**42.9**
Government	4.1	1.1	0.5	0.0	0.4	**6.1**
Other	0.7	0.9	0.3	0.2	0.1	**2.2**
Not specified	0.0	0.0	0.0	0.0	0.1	**0.1**
All first plaintiffs	**58.2**	**28.2**	**7.5**	**2.7**	**3.4**	**100.0**

Source: LJF entity coding. Based on a random sample of 1,000 of all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Plaintiffs and defendants recorded in the substantive proceeding were classified according to LJF entity coding. Analysis was based on first plaintiffs and first defendants in the substantive proceeding.

The above figures are based on first plaintiff versus first defendant for the substantive proceeding, assuming they are the primary litigant on each side. However, when there is more than one plaintiff or defendant, there may also be more than one entity type.

We were also interested in identifying the extent to which organisations are involved as litigants in the substantive proceeding. In some cases with multiple litigants, the first plaintiff (or first defendant) may not be an organisation, even though other plaintiffs (or other defendants) may be organisations. Thus, to examine this question, we selected one plaintiff in the substantive proceeding by applying the following hierarchy of entity type to all plaintiffs in the substantive proceeding: business, government, other, individual and not specified: Consequently, if there was both a business plaintiff and a plaintiff who was an individual, the business plaintiff was selected. We similarly prioritised defendants. Of course, depending upon the policy question of interest, this approach could be varied.

Table 18 indicates that, when analysed in this way, a similar pattern emerged, though, as would be expected, there was a decrease in the proportion of cases where the selected defendant was an individual (from 58.2% to 53.0%) and a slight increase in the proportion of cases where the selected defendant was a business or government agency.

Table 18: LJF coding of plaintiff and defendant types in 1,000 Supreme Court cases

	Defendant type					
Plaintiff type	**Individual**	**Business**	**Government**	**Other**	**No defendant/ missing**	**All defendants**
Individual	26.8	11.2	7.1	1.5	1.3	**47.9**
Business	21.6	18.1	2.0	0.5	1.5	**43.7**
Government	4.0	1.2	0.5	0.0	0.4	**6.1**
Other	0.6	1.1	0.3	0.1	0.1	**2.2**
Missing	0.0	0.0	0.0	0.0	0.1	**0.1**
Total	**53.0**	**31.6**	**9.9**	**2.1**	**3.4**	**100.0**

Source: LJF entity coding. Based on a random sample of 1,000 of all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Plaintiffs and defendants recorded in the substantive proceeding were classified according to LJF entity coding. Analysis was based on one plaintiff and one defendant per substantive proceeding, selected on the following prioritisation if there were multiple litigants on either side: business, government, other, individual, not specified.

Improving information about plaintiffs and defendants

Greater clarity in the definition of 'individuals' and 'organisations' would facilitate a shared understanding of what types of entities may be found in each of these categories. This would involve providing more concrete definitions of each of these categories to those entering the data on JusticeLink. Further, the definition of each should not relate to fees paid – as fees paid do not necessarily reflect whether the entity is actually an 'individual' or an 'organisation'.

To better answer the question of who is taking action in the Supreme Court and who is subject to this action, more detailed categories (beyond individual versus organisation) would be required on JusticeLink. One approach could be to have plaintiffs select a category from a more detailed list (e.g. Commonwealth Government, state government, local government, small business (<20 employees), micro-business (<4 employees, sole business etc.) when filing in the court. While plaintiffs 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 defendant. There may be scope for defendants to correct this detail if and when they file a defence by requiring them to self-declare their entity type.

ABN and ACN

Another approach is to use ABNs or ACNs to link organisations to the categories already defined through the Australian Business Register (ABR). However, Table 19 shows that well over half of all organisational plaintiffs (58.4%) and defendants (56.2%) did not record their ABN or ACN on JusticeLink. ABN/ACN will only be useful for statistical purposes if it is made a compulsory field in JusticeLink (and when e-filing) for all organisational parties who are businesses and so are required to have an ABN.

Table 19: 'Organisation' plaintiffs and defendants with an ABN and/or ACN recorded in JusticeLink, Supreme Court selected cases

Recording of ABN and ACN	Plaintiff	Defendant
	N=3,439	N=2,539
	%	%
Neither recorded	**58.4**	**56.2**
Neither recorded	27.7	38.0
Incorrect ACN only[a]	30.7	18.2
Only one recorded	**41.2**	**43.4**
ACN only[b]	16.2	27.6
ABN only (no ACN)[c]	24.0	15.1
ABN only (incorrect ACN)[d]	1.0	0.8
Both recorded[e]	**0.4**	**0.4**
Total	**100.0**	**100.0**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on first plaintiffs and first defendants recorded as organisations in the substantive proceeding of these selected cases.
a The number recorded in the ACN field had fewer than the 9 digits required for a correct ACN. No ABN was recorded.
b A 9-digit number was recorded in the ACN field. No ABN was recorded.
c An 11-digit number was recorded in the ABN field. No ACN was recorded.
d An 11-digit number was recorded in the ABN field. The number recorded in the ACN field had fewer than the 9 digits required for a correct ACN.
e An 11-digit number was recorded in the ABN field and a 9-digit number was recorded in the ACN field.
Note: N=3,439 first plaintiffs and 2,539 first defendants recorded as organisations.

4. What type of Supreme Court cases are different entities involved in?

DATA QUALITY – LOW
As for question 3.

This section examines the types of plaintiffs and defendants in each list, based on the substantive proceeding in our sample of 1,000 cases. Division and list was used to broadly differentiate between different types of cases and present a plausible picture of the kinds of claims that different types of entities are involved in. To account for different numbers of plaintiffs and defendants within cases, the analyses were based on one plaintiff and one defendant per case, starting with first plaintiffs and first defendants.

Types of plaintiff by list

Table 20 indicates how the types of first plaintiffs bringing cases vary considerably from list to list.

Table 20: LJF coding of first plaintiff types by list in 1,000 Supreme Court cases

Division and list	Cases	Individual	Business	Government	Other
	N	%	%	%	%
Common Law Division	**401**	**34.7**	**52.6**	**11.0**	**1.7**
Administrative law	24	54.2	33.3	4.2	8.3
Defamation	6	100.0	0.0	0.0	0.0
General	139	62.6	18.7	17.3	1.4
Possession of land	194	5.2	90.7	2.6	1.5
Proceeds of crime	14	0.0	0.0	100.0	0.0
Professional negligence	24	95.8	4.2	0.0	0.0
Equity Division	**597**	**58.1**	**36.5**	**2.8**	**2.5**
Commercial	41	19.5	80.5	0.0	0.0
Corporations	142	17.6	73.9	7.0	1.4
General – family provision	164	100.0	0.0	0.0	0.0
General – other	135	61.5	34.1	3.0	1.5
Probate	37	100.0	0.0	0.0	0.0
Protective	8	100.0	0.0	0.0	0.0
Real property	40	50.0	42.5	5.0	2.5
Technology and construction	24	4.2	62.5	0.0	33.3
Equity – other	6	16.7	33.3	16.7	33.3
Other/unclear	**1**	**100.0**	**0.0**	**0.0**	**0.0**
Total	**999**	**48.7**	**42.9**	**6.1**	**2.2**

Source: LJF entity coding. Based a random sample of 1,000 of all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Plaintiffs recorded in the substantive proceeding were classified according to LJF entity coding. Analysis was based on the first plaintiff in the substantive proceeding.
Note: One case in the *Common law – general* list was missing plaintiff ID.

Key observations include that:

- in the *Defamation*, *Equity – general – family provision*, *Probate* and *Protective* lists, all first plaintiffs were individuals, as were the vast majority (95.8%) of first plaintiffs in the *Professional negligence* list
- in the *Proceeds of crime* list, all 14 first plaintiffs were government agencies, and government agencies comprised 17.3% of the *Common law – general* list
- businesses featured prominently as first plaintiffs in the *Possession of land* list (90.7%) (largely banks and other lenders), the *Commercial* (80.5%) and the *Technology and construction* (62.5%) lists.

Types of defendant in each list

Table 21 examines the types of first defendants in each list.

Table 21: LJF coding of first defendant types by list in 1,000 Supreme Court cases

Division and list	Cases	Individual	Business	Government	Other	Not specified (inc. no defendant)
	N	%	%	%	%	%
Common Law Division	**401**	**66.3**	**18.5**	**10.7**	**3.2**	**1.2**
Administrative law	24	37.5	25.0	33.3	4.2	0.0
Defamation	6	0.0	66.7	33.3	0.0	0.0
General	140	35.7	37.1	17.1	7.9	2.1
Possession of land	194	95.4	3.6	0.5	0.5	0.0
Proceeds of crime	14	85.7	0.0	0.0	0.0	14.3
Professional negligence	23	43.5	21.7	34.8	0.0	0.0
Equity Division	**598**	**52.8**	**34.8**	**5.4**	**2.2**	**4.8**
Commercial	41	36.6	61.0	0.0	2.4	0.0
Corporations	142	8.5	74.6	7.0	0.7	9.2
General – family provision	165	95.2	0.0	3.6	0.0	1.2
General – other	135	54.8	30.4	4.4	5.2	5.2
Probate	37	83.8	0.0	0.0	2.7	13.5
Protective	8	75.0	12.5	12.5	0.0	0.0
Real property	40	47.5	37.5	7.5	5.0	2.5
Technology and construction	24	4.2	83.3	4.2	4.2	4.2
Equity – other	6	16.7	0.0	83.3	0.0	0.0
Other/unclear	**1**	**0.0**	**0.0**	**0.0**	**100.0**	**0.0**
Total	**1,000**	**58.2**	**28.2**	**7.5**	**2.7**	**3.4**

Source: LJF entity coding. Based on a random sample of 1,000 of all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Defendants recorded in the substantive proceeding were classified according to LJF entity coding. Analysis was based on the first defendant in the substantive proceeding.
Note: In 34 cases, there was no defendant or the defendant information was missing.

Key observations include that:

- individuals dominated most lists as first defendants, with more than 9 in 10 first defendants being individuals in the *Possession of land* (95.4%), *Equity – general – family provision* (95.2%), and the *Probate* (90.9%) lists. The notable exceptions were the *Defamation, Technology and construction* and *Corporations* lists, in which less than 10% of first defendants were individuals

- government agencies featured as first defendants in the *Equity – other* list (83.3%) and made up around one-third of first defendants in the *Professional negligence*, *Administrative law* and *Defamation*[33] lists
- businesses featured most prominently as first defendants in the *Technology and construction* list (83.3%), followed by the *Corporations* (74.5%), *Defamation* (66.7%)[34] and *Commercial* lists (61.0%).

In 34 of our 1,000 cases there was no first defendant (e.g. 'applications in the matter of…') or the defendant information could not be gleaned from the title of the case (e.g. 'TBD').

Tables 20 and 21 present entity type by list for *first* plaintiffs and *first* defendants. As noted in Section 3, the profile of litigants on each side of a case may look different if *all* plaintiffs and *all* defendants were factored into the analysis. Tables A4 and A5 are identical to Tables 20 and 21, except that entity type by list is presented for one plaintiff and one defendant, selected from all plaintiffs/defendants on the basis of a prioritisation of organisations (business, government, other) over individuals.

Who is taking action against whom in each division?

Using the 1,000 cases, we also examined who is taking action against whom by division. Focusing first on the Common Law Division cases (N=401 of the 1,000 cases), Table 22 shows:

- 46.1% involved a business plaintiff against an individual defendant and 13.0% involved an individual plaintiff against a business defendant
- 9.5% involved an individual against an individual and a further 9.5% involved an individual against a government agency
- 9.5% involved a government agency against an individual.

Table 22: LJF coding of first plaintiff and defendant types, Common Law Division cases within sample of 1,000 Supreme Court cases

Common Law Division	Defendant type					
(N=401)	Individual	Business	Government	Other	Not specified	All defendants
Plaintiff type	**% of cases**					
Individual	9.5	13.0	9.5	2.7	0.0	**34.7**
Business	46.1	5.0	1.0	0.5	0.0	**52.6**
Government	9.5	0.2	0.2	0.0	1.0	**11.0**
Other	1.2	0.2	0.2	0.0	0.0	**1.7**
All plaintiffs	**66.3**	**18.5**	**11.0**	**3.2**	**1.0**	**100.0**

Source: LJF entity coding. Based on a random sample of 1,000 of all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Plaintiffs and defendants recorded in the substantive proceeding were classified according to LJF entity coding. Analysis was based on the first plaintiff and first defendant in the substantive proceeding.
Note: N=401 cases in the Common Law Division. One case was missing plaintiff type.

[33] Note that the percentage for the Defamation list was based on only 6 cases and may not be reliable.

[34] Again, note that this percentage for the Defamation list was based on only 6 cases and may not be reliable.

Table 23 indicates a different pattern for the Equity Division cases (N=596) within our sample of 1,000 cases. Specifically:

- 43.5% involved an individual plaintiff against an individual defendant and 8.6% involved an individual against a business
- 23.3% involved a business against a business, and 8.9% involved a business against an individual.

Table 23: LJF coding of first plaintiff and defendant types, Equity Division cases within sample of 1,000 Supreme Court cases

Equity Division	Defendant type					
(N=596)	Individual	Business	Government	Other	Not specified	All defendants
Plaintiff type			**% of cases**			
Individual	43.5	8.6	3.0	1.2	2.2	**58.2**
Business	8.9	23.3	1.2	0.7	2.3	**36.4**
Government	0.5	1.7	0.7	0.0	0.0	**2.9**
Other	0.3	1.3	0.3	0.3	0.2	**2.5**
All plaintiffs	**53.0**	**34.9**	**5.2**	**2.2**	**4.7**	**100.0**

Source: LJF entity coding. Based on a random sample of 1,000 of all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Plaintiffs and defendants recorded in the substantive proceeding were classified according to LJF entity coding. Analysis was based on the first plaintiff and first defendant in the substantive proceeding.
Note: N=596 cases in the Equity Division.

Tables A6 and A7 are identical to Tables 22 and 23, except that they do not focus on first plaintiff. Instead, they focus on one plaintiff and one defendant, selected from all plaintiffs/defendants on the basis of a prioritisation of organisations (business, government, other) over individuals. These tables indicate more cases involving businesses against businesses and fewer cases involving individuals against individuals.

5. In which Supreme Court cases do defendants respond?

DATA QUALITY – LOW
While there is generally accurate data indicating an active response by the defence, reporting on matters defended in the Supreme Court is complex. First, some cases do not have respondents or defendants. As there is no flag that identifies these cases, this must be checked manually. Second, there are several ways in which the defence may respond. But as there is no flag to indicate a response by the defence, several data fields need to be analysed together to identify whether there has been any defence activity. A further complication is the presence of multiple defendants in some cases. Each defendant may respond differently, adding to the challenge of consistent and accurate reporting.

A policy question of interest to the Department of Justice NSW is the extent to which cases are 'defended'. Information about the engagement of defendants in court matters provides additional insight into how the courts are used, and by whom. It is an indication of the active participation of defendants and, therefore, potentially more intensive case management by the court being required to resolve the case.

Identifying in the data how parties formally respond to an action taken against them in the Supreme Court can be quite challenging. In part, this is because Supreme Court cases include a range of claim and application types to which a party may 'respond'. In addition, 'responding' to an action involves actively engaging with the case at court, but may or may not also involve 'defending' the case. Further, there are also matters (for instance certain applications under corporations law) for which there is no identified defendant and therefore a 'defence' is not relevant. These caveats must be considered when reviewing the following data. Note again, we use the word 'defendant' to include defendants and respondents in the following discussion.

Definition and quality of data on defended cases

If defendants are to respond to a claim commenced by way of statement of claim, they must file a 'notice of defence'. If they are responding to this or any other type of claim or application, they may file a 'notice of appearance' (irrespective of the initiating document). Notices of defence and notices of appearance are captured by JusticeLink with information about who filed the notice and in what capacity (e.g. defendant, cross-defendant, etc.). The following analysis was based on these notices.

Note however, that defendants may also respond by way of cross-claim, which is typically a separate proceeding within a case. This may be in addition to *or* in place of a notice of defence or appearance in the substantive proceeding. There was a cross-claim proceeding in 7.3% (N=502) of the selected cases we examined. In the vast majority of these cases,

there was also a defence or appearance notice filed in the substantive proceeding. However, in a small proportion of the selected cases reviewed (29 or 0.4%) there was no appearance or defence notice filed in the substantive proceeding, but there was a separate cross-claim proceeding in the case.

There were also nine substantive proceedings in which an 'acknowledgement of a liquidated claim' order[35] was made, but no defence or appearance notice was filed in these matters. Thus, while defence and appearance notices are a reasonable proxy for defence activity, a very small proportion of cases in which there was an active response by the defence (e.g. a cross-claim without a notice of defence or appearance) may be missed.

Our casefile analysis showed that most notices of appearance are filed for defendants by legal representatives.

Box 1: Defence activity

To defend a claim where the matter commences with a statement of claim, defendants must file a notice of defence, generally within 28 days of receiving notice of the claim.[36] If they do not do so, a default judgment is entered against them. A defendant seeking to respond to or defend a matter not initiated by a statement of claim must first file a notice of appearance. A notice of appearance may signify 'a defence' but it may also signify a response that is not a 'defence' (e.g. a submission submitting to the facts). Other applications may not require or invite a response from the defendant. A defendant may also respond by way of cross-claim, but most commonly having also submitted a defence notice or appearance notice.

Defendant responses in the Supreme Court

A Supreme Court case may have multiple proceedings and multiple defendants. In this analysis we focused on defence activity by at least one defendant in the substantive proceeding.

[35] We found these in the data provided on orders. However, because we did not request data on 'acknowledgement of liquidated claim' documents filed, this may undercount the total number filed by defendants. In other words, defendants may have filed such a notice but the matter may not have progressed to a corresponding final order of this type.

[36] Uniform Civil Procedure Rules, 2005, Reg 14.3. See http://www.austlii.edu.au/au/legis/nsw/consol_reg/ucpr2005305/s14.3.html. Alternatively, if the defendant has made an unsuccessful application to have the statement of claim set aside, they must file a defence within 7 days after the refusal of that application.

Table 24: Defendant responses in Supreme Court selected cases

Defence/appearance notice filed	Cases N=6,887
	%
A notice of defence *or* appearance filed	**52.8**
Notice of defence *only*	5.4
Notice of appearance *only*	34.8
Both notice of defence and appearance	12.6
No notice of defence or appearance filed	**47.2**
Cross-claim filed in case (but no defence or appearance notice in substantive proceeding)	0.4
No defendant in matter^	2.0

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on the substantive proceeding, examining whether a notice of defence or notice of appearance was filed by at least one defendant for that proceeding. ^ Identified on the basis of: a) the case title indicating no defendant (e.g. in the matter of…) and b) no defendant named in the data provided. There were 5 cases in which there was no identifiable defendant but some indication of defence activity.

JusticeLink data indicates that at least one notice of defence and/or a notice of appearance was filed in the substantive proceeding in just over half (52.8%) of the selected cases (see Table 24). In the remaining cases, no defence or appearance notice was filed in the substantive proceeding. Among these cases were 135 cases in which there was no defendant (representing for 4.2% of cases with no defence activity and 2% of all selected cases). These matters include certain applications under corporations law and some estate matters.

Table 25: Defendant notices filed by initiating document in Supreme Court selected cases

Initiating document	Cases	Notice of defence only	Notice of appearance only	Both notices	No notice
	N	%	%	%	%
Statement of claim	3,107	11.9	9.5	27.9	50.8
Summons	2,694	0.0	67.2	0.0	32.8
Originating process (corporations law)	860	0.0	33.0	0.0	67.0
Interlocutory application	86	0.0	8.1	0.0	91.9
Total	**6,747**	**5.5**	**35.5**	**12.8**	**46.2**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on the substantive proceeding, examining whether a notice of defence or notice of appearance was filed by at least one defendant for that proceeding. **Note:** 140 cases in which there was no defendant in the substantive proceeding were excluded.

As noted above, the type of notice filed by a defendant in response to a matter depends upon the initiating document. Table 25 is based only on those selected cases in which there was a defendant recorded in the substantive proceeding.

As shown in Table 25, of the substantive proceedings that commenced by:

- a statement of claim, 27.9% resulted in both a notice of defence and a notice of appearance, 11.9% resulted in only a notice of defence, 9.5% resulted in only a notice of appearance and about half resulted in neither type of notice
- a summons, about two-thirds resulted in a notice of appearance and one-third in no notice
- an originating process under corporations law, one-third resulted in a notice of appearance and the rest in no notice
- an interlocutory application, most (91.9%) resulted in no notice and the rest resulted in a notice of appearance.

Defendant response by list

The extent and type of defendant response also varied considerably by list. The type of notice filed by defendants (notice of defence only, notice of appearance only, both or neither) is reported by list in Appendix Table A8.

Again focusing only on those matters in which there was a defendant recorded, at least one notice of defence or appearance was filed in the substantive proceeding by the defence in 38.5% of the reviewed cases in the Common Law Division and in 61.5% of cases in the Equity Division.

Looking by list, Table 26 indicates that, in the substantive proceeding, a notice of defence or appearance was filed in more than 9 out of 10 cases in the *Professional negligence* (96.0%), *Administrative law* (90.4%) and *Defamation* (90.2%) lists.

In contrast, *no* notice was filed in the substantive proceeding in the majority of cases in the *Possession of land* (91.2%), *Protective* (78.7%) and *Corporations* (67.6%) lists (see Table 26). The high percentage of *Possession of land* cases with no notice filed is consistent with many of these cases resulting in dismissal due to inactivity and default judgment.[37] The high percentage of *Protective* list cases with no notice filed reflect that these matters typically relate to the proper management of affairs for people deemed incapable of managing their own affairs, so there is only a 'defence' if a dispute arises.[38]

[37] Our casefile analysis of e-Service (online only) *Possession of land* list cases with final outcomes recorded (N=16) revealed that 62.5% of cases were dismissed due to inactivity and a further 37.5% were default judgments.

[38] Note that the Court uses manual spreadsheets rather than JusticeLink to complete reporting on the *Protective* list.

Table 26: Defendant response by list, Supreme Court selected cases

Division and list	Cases	Notice of defence or appearance filed	No notice filed
	N	%	%
Common Law Division	**2,833**	**38.5**	**61.5**
Administrative law	135	90.4	9.6
Defamation	51	90.2	9.8
General	1,002	58.6	41.4
Possession of land	1,395	8.8	91.2
Proceeds of crime	99	67.7	32.3
Professional negligence	151	96.0	4.0
Equity Division	**3,899**	**65.1**	**34.9**
Commercial	229	84.7	15.3
Corporations	966	32.4	67.6
General – family provision	1,063	81.4	18.6
General – other	972	77.7	22.3
Probate	173	65.3	34.7
Protective	94	21.3	78.7
Real property	245	62.4	37.6
Technology and construction	134	80.6	19.4
Equity – other	23	78.3	21.7
Other/unclear	**15**	**20.0**	**80.0**
Total	**6,747**	**53.8**	**46.2**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on the substantive proceeding, examining whether a notice of defence or notice of appearance was filed by at least one defendant for that proceeding.
Note: 140 cases in which there was no defendant in the substantive proceeding were excluded.

Time until a notice was first lodged by the defence

A question of policy interest is the length of time from when a matter commences until a defendant first responds, either by way of a notice of defence or notice of appearance.

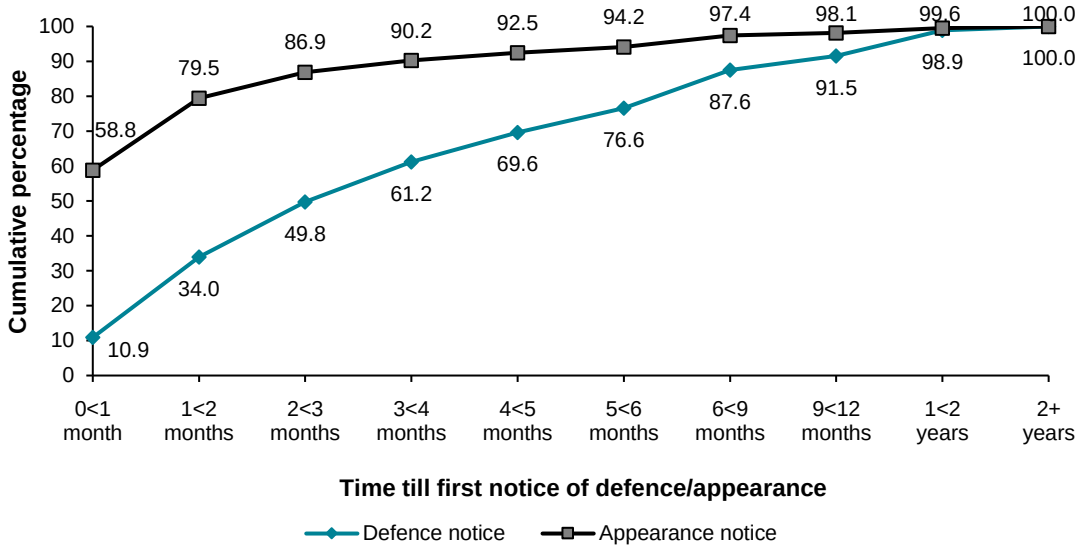
The JusticeLink data provided to us included the creation date of the substantive proceeding rather than the lodgement date of the initiating document for that proceeding. As a result, we used this creation date as a proxy for lodgement date, and calculated the time until the first notice (of defence or appearance) was lodged by the defendant.

Notices of defence compared to notices of appearance

We first compared how quickly defence notices were filed compared to appearance notices.

Figure 5 is based on the subset of selected cases where a notice of defence or appearance was filed in the substantive proceeding (by any defendant). It indicates that, overall, notices of appearance tended to be filed earlier than notices of defence. Only 10.9% of notices of defence were first filed within a month of the proceeding creation (lodgement) date, and around one-third (34.0%) were first filed within 2 months. At 6 months, 76.6% of first notices of defence had been filed. By way of contrast, 58.8% of notices of appearance were first filed within a month and nearly 80% were first filed within 2 months. By 6 months, 94.2% of first notices of appearance had been filed.

Figure 5: Time till first notice of defence *or* first notice of appearance filed, Supreme Court selected cases



Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based only on cases where a notice of defence or a notice of appearance was filed by at least one defendant in the substantive proceeding.
Notes: N=3,226 substantive proceedings where a notice of appearance was filed by at least one defendant and N=1,238 substantive proceedings where a notice of defence was filed by at least one defendant. If there was an appearance notice and a defence notice lodged in a case, the first of each is included in this figure.

The differences in time taken to file a notice of defence compared to a notice of appearance may largely reflect the procedures involved in filing and serving a statement of claim. Chief among these is the time it takes for statements of claim to be served on defendants and any associated applications for extension of time for service or substituted service. Future analyses could address this by reporting how much time elapses between when a statement of claim is *served* (as opposed to when it is lodged) and when a notice of defence is filed. This would also account for circumstances where, following failure to serve, the plaintiff has commenced fresh proceedings by filing another originating process.[39] There may also be cases in which the first notice of defence was filed after the matter had already proceeded to default judgment and the defendant had successfully applied to have the default judgment set aside.

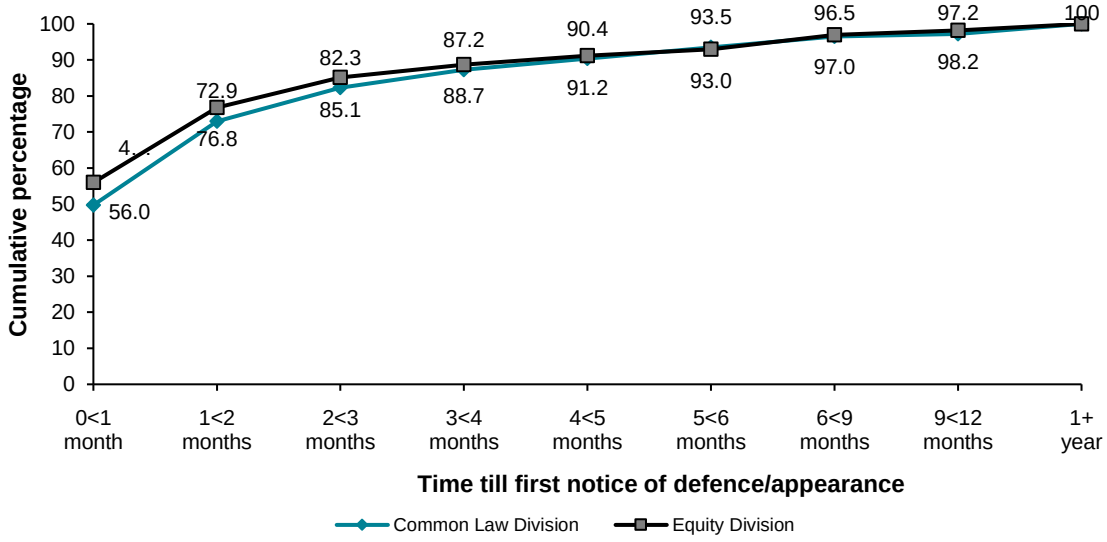
[39] See Uniform Civil Procedure Rules 2005, Reg 6.2.

Notices of defence and appearance combined

As noted above, notices of defence can only be filed in matters commencing by way of statement of claim, while notices of appearance can be filed in these matters as well as matters that commence by summons or other originating processes. In the following analyses, where there were both types of notices in a single proceeding, we selected the earliest notice filed by a defendant in the substantive proceeding.

Figure 6 shows the cumulative proportion of defence or appearance notices filed by defendants, by month in each division. It indicates that 56.0% of defence or appearance notices filed in the Equity Division were filed within one month compared to 49.7% in the Common Law Division.

Figure 6: Time till first notice of defence *or* appearance filed by division, Supreme Court selected cases



Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based only on cases where a notice of defence or a notice of appearance was filed by at least one defendant in the substantive proceeding.
Note: N=3,634 substantive proceedings where a notice of defence or a notice of appearance was filed by at least one defendant, including 1,090 in the Common Law Division and 2,544 in the Equity Division. Three cases were excluded because the division was unclear.

Table 27 indicates more variation by list. Defence or appearance notices were filed by defendants earlier in the *Administrative law* list, *Defamation* list, *Technology and construction* list and *Equity – general – other* list, with 62.3–78.7% of the notices in these lists being within a month.

By way of contrast, defence or appearance notices were filed later in the *Probate* list and the *Possession of land* list, with only 21.7% and 29.3%, respectively, being filed within a month.[40] It is important to note, however, that different lists involve different procedures. Notably, a significant amount of time may lapse between the lodgement of an initiating document for probate matters and the commencement of contested proceedings.

[40] Most possession of land matters are processed via e-Services.

Table 27: Time till first notice of defence or appearance filed by list, Supreme Court selected cases

Division and list	Notices	0<1 month	1<3 months	3<6 months	6<12 months	1 year +
	N	%	%	%	%	%
Common Law Division	**1,090**	**49.7**	**32.6**	**11.2**	**3.8**	**2.8**
Administrative law	122	78.7	16.4	2.5	0.8	1.6
Defamation	46	65.2	28.3	6.5	0.0	0.0
General	587	47.0	33.9	13.3	3.2	2.6
Possession of land	123	29.3	49.6	11.4	6.5	3.3
Proceeds of crime	67	38.8	32.8	13.4	7.5	7.5
Professional negligence	145	53.8	27.6	10.3	5.5	2.8
Equity Division	**2,544**	**56.0**	**29.1**	**7.9**	**5.2**	**1.8**
Commercial	194	56.7	19.6	7.7	12.9	3.1
Corporations	315	55.6	35.9	7.0	1.0	0.6
General – family provision	865	52.4	37.8	6.7	2.1	1.0
General – other	756	62.3	20.5	8.6	6.2	2.4
Probate	115	21.7	32.2	14.8	22.6	8.7
Protective	20	60.0	20.0	15.0	5.0	0.0
Real property	153	60.1	30.1	7.2	2.6	0.0
Technology and construction	108	63.9	18.5	8.3	7.4	1.9
Equity – other	18	94.4	5.6	0.0	0.0	0.0
Total	**3,634**	**54.1**	**30.1**	**8.9**	**4.8**	**2.1**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based only on cases where a notice of defence or a notice of appearance was filed by at least one defendant in the substantive proceeding.
Note: Three cases were excluded because the division was unclear.

Improving the data

The present review revealed a number of challenges in trying to use JusticeLink data to identify a) whether a matter has a defendant and b) whether a matter is defended. Below we discuss specific challenges and JusticeLink fields relevant to these challenges.

Identifying matters with a defendant

The proportion of matters defended in court is a key policy question. However, as illustrated by the data above, asking this question of Supreme Court cases is complicated by the varying types of matters heard in this jurisdiction. The question makes sense in matters where there is a defendant, such as claim matters. The question is less appropriate in those matters where there is no defendant, such as certain applications to the Supreme Court. Recognising this, the analytical challenge is to identify the appropriate denominator – that is, all cases in the Supreme Court or only those cases in which there was a defendant to potentially defend the matter. The choice will depend upon the question being asked. If the aim of the analysis is to estimate the proportion of *cases* in which there was

an active defence (for instance, to compare to other courts) then the total number of cases may be the appropriate denominator. However, if the aim is to understand the proportion of defendants who actively respond to their matters, then the relevant denominator is those cases in which there was a defendant. While this second question is very sensible, it does complicate any cross-jurisdiction analysis.

Participant status

JusticeLink has a 'status' field that is attached to participants and includes the categories of 'defended' and 'appearance' (as well as 'no appearance', 'non-enforceable', 'hearing', 'reserved judgment', 'referred to arbitration', 'stayed' etc.). However, when this field is updated on JusticeLink as the matter progresses, it overwrites previous statuses. Because the participant status is updated when certain activity occurs, the participant status will update to 'defended' when a notice of defence is filed or 'appearance' when a notice of appearance is filed. However, this will be overwritten when the status is then next updated to 'hearing' and so forth. For this reason, the participant status field cannot be used to assess the proportion of matters in a given period that were defended or for which an appearance was filed by the defence. Moreover, there is no category that reflects other forms of response from the defendant (e.g. acknowledgement of liquidated claim, defence submission submitting to the facts and the like).

6. Who is represented in the Supreme Court and for what cases?

DATA QUALITY – LOW TO MODERATE

The quality of JusticeLink data on representation varied with the specific question asked. While it was relatively straightforward to assess whether there was any representative for any plaintiff or defendant at any point in a case, it is very difficult to assess how representation varied within groups of plaintiffs and defendants and how it changed over the life of the case. That is, details of representatives were recorded on JusticeLink for the majority of the cases reviewed, but it is not clear if these details are recorded consistently for *all* plaintiffs and defendants when there are multiple parties in a case.

Further, it was not possible to assess if (and why) parties were self-represented (that is, had no legal assistance at all), unrepresented in particular hearings or proceedings, or whether representation data was at times missing. A field indicating whether litigants are 'self-represented' would assist analysis.

These caveats regarding the underlying JusticeLink data should be kept in mind when referring to the data in this section.

There is significant policy interest in the question of whether parties are represented in court proceedings. When a party does not have representation it can affect the degree of case management required on the part of the court, and the progress and eventual outcome of the case for participants. We considered what information is available from JusticeLink about the representation of plaintiffs and defendants, how rates of representation vary by list type and entity type, and what sorts of conclusions can be drawn from this information.

However, as there are a proportion of matters in the Supreme Court that are not contested claims, cases without representatives recorded may include cases:

- that do not involve a defendant (and therefore involve no representative)
- in which the defendants are not actively defending a claim (such as claims that result in default judgment) and therefore no representative is recorded
- where a party has legal assistance but there is no solicitor on the record (e.g. pro bono or other advice provided outside of the court)
- with self-represented defendants seeking to defend their claims. Note that while some parties may be self-represented because they cannot afford representation, others may be self-represented by choice, including parties who themselves are lawyers.

All of these situations will appear on face value in the data as cases in which there is 'no representative' for the defendant.

Of note, in addition to lawyers, authorised officers of the Australian Taxation Office, and representatives from the Australian Federal Police, Proceeds of Crime Litigation Unit were also recorded in the data. These may be legal representatives or otherwise, but are included in our analysis.

Definition and quality of representation data

The legal representatives in the Supreme Court that are recorded on JusticeLink have their full details entered, including their name and address and the dates for which they were representing the party. Every time a party changes a representative (or a representative's details change), this information is updated on JusticeLink. However, an important limitation of the data on representation is that lack of representation can only be inferred (imperfectly) from the absence of these details. There is no 'self-represented' value or field.

Some Supreme Court matters are complex, involving multiple proceedings and multiple litigants, who can change between different proceedings within a case (see Figure 7). Representative information is linked to each litigant, and each litigant is linked to the relevant proceedings.

Furthermore, a litigant can have different representatives at different points in the case. In some cases, the representative (or representatives) may be recorded (for one or more litigants) in one proceeding and not another.[41]

Thus, with regard to representation rates, decisions need to be made about *which proceedings* to consider, that is, whether there was representation:

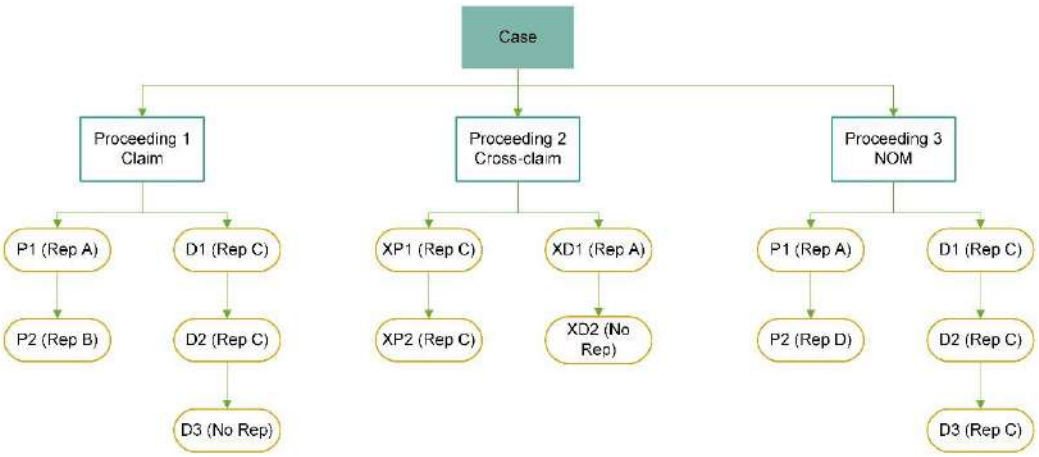
- in the substantive proceeding
- in any proceeding
- in all proceedings.

In addition, decisions need to be made about *which parties* to consider when determining representation rates, that is, whether there was representation for:

- all parties (every plaintiff and defendant)
- any party (any plaintiff and any defendant)
- the first named party (e.g. first listed plaintiff and first listed defendant).

[41] Representative details are linked to each party. The parties are linked to each proceeding, and each proceeding to the case.

Figure 7: Example of how representation in a case may appear in JusticeLink data



Notes: 'P' stands for plaintiff and 'D' stands for defendant. XP and XD indicate a cross-plaintiff and a cross-defendant. 'Rep' stands for representative and NOM refers to notice of motion. Note that the cross-plaintiff (i.e. XP1) in the second (cross-claim) proceeding is the same litigant as the defendant in the first (claim) proceeding (i.e. D1). In this example the substantive proceeding is proceeding 1, the original claim.

The JusticeLink data extracted on legal representatives indicated that, where there are multiple parties:

- the same lawyer (or group of lawyers) may be recorded against all or some of the plaintiffs (or against all or some of the defendants)
- there may be different lawyers for each plaintiff (or each defendant)
- there may be one or more lawyers recorded against some plaintiffs but not others (and some defendants but not others).

We also observed, for example, that a litigant may have a representative recorded against their name in the first proceeding but not all of the subsequent proceedings. This may be because the lawyer did not appear in some proceedings (including where they did not need to) or because the information was not recorded against these proceedings (as it had already been recorded elsewhere).

Taking account of this complexity of the cases and of the data, we examined the following questions:

- Is there a representative for any plaintiff (and, similarly, for any defendant) in at least one proceeding in the case? That is, is there any representation within the case?
- Is there a representative for any plaintiff (and, similarly, for any defendant) in the substantive proceeding in the case?
- Is there a representative for all plaintiffs (and, similarly, for all defendants) in the substantive proceeding within the case?
- How does representation vary by entity type?

Any representation within the case

The broadest question to ask is 'was there a representative for *any* plaintiff (and, similarly, for *any* defendant) at any point in the whole case?' This provides a useful broad overview, particularly for comparing representation rates for plaintiffs and defendants across divisions and lists.

Table 28 first indicates the proportion of cases within each division and list in which there was a representative listed on JusticeLink for at least one plaintiff and, separately, for at least one defendant, in *at least one* proceeding in the case. (See columns titled 'Cases with a represented plaintiff' and 'Cases with a represented defendant'.) Note that the total number of cases reported on is less for defendants than plaintiffs, as matter types which by their nature do not involve defendants (e.g. certain applications) were excluded.

In the clear majority (96.1%) of cases there was a representative for at least one plaintiff at some point in the case. However, this ranged from 99.6% in the *Commercial* list and 99.5% in the *Possession of land* list to 89.5% in the *Protective* and 85.2% in the *Administrative law* lists.

In contrast to the high representation rates for plaintiffs, there appeared to be low representation rates for defendants in some lists. In particular, a representative was recorded at some point in the case for at least one defendant in only 8.1% of cases in the *Possession of land* list. However, it is important to note the high proportion of these matters that go to default judgment or are dismissed for inactivity, which means there is *no activity by the defendant* in the court. With no activity by the defendant in the court, there is clearly no representative recorded. Other lists with low apparent levels of representation for defendants at any point in the case included the *Protective* list (20.0%) and the *Corporations* list (39.4%). These lists include matter types that do not involve defendants, cases without a defendant recorded, and/or cases where there was no activity by the defendant.

Lists with a higher proportion of cases indicating a defendant representative at any point were the *Common law – general* (61.0%), *Proceeds of crime* (63.6%), *Real property* (64.0%) and *Probate* (64.1%) lists.

Importantly, these broad figures based on representation at *any* point in the case may overestimate the level of representation and cannot effectively identify 'unrepresented' litigants. They may overestimate representation as there may be individual unrepresented litigants among groups of multiple plaintiffs (or multiple defendants) who are represented, and/or because people may be represented for only some proceedings within a case but not others.

Table 28: Legal representation, based on any plaintiff and any defendant at any point in the case, Supreme Court selected cases

Division and list	Cases with a represented plaintiff^ N=6,882	Substantive proceeding with a represented plaintiff# N=6,881	Cases with a represented defendant^ N=6,691	Substantive proceeding with a represented defendant# N=6,644
	%	%	%	%
Common Law Division	**95.4**	**94.6**	**38.8**	**38.2**
Administrative law	85.2	84.4	93.2	92.5
Defamation	90.2	90.2	90.0	90.0
General	90.7	89.2	61.0	60.1
Possession of land	99.5	99.0	8.1	7.6
Proceeds of crime	98.0	98.0	63.6	64.4
Professional negligence	98.0	98.0	94.7	94.7
Equity Division	**96.6**	**90.1**	**69.4**	**65.1**
Commercial	99.6	97.4	91.3	89.5
Corporations	96.7	86.7	39.4	32.8
General – family provision	98.7	98.6	85.0	85.0
General – other	95.3	86.4	82.1	74.7
Probate	94.6	74.9	64.1	55.1
Protective	89.5	85.3	20.2	19.4
Real property	94.3	87.3	64.0	58.1
Technology and construction	97.0	92.5	92.4	88.6
Equity – other	95.7	91.3	87.0	87.0
Other/unclear	**86.4**	**40.9**	**72.2**	**26.7**
Total	**96.1**	**91.8**	**56.6**	**53.7**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on representation for any of the plaintiffs and any of the defendants in (a) the case at any point and (b) the substantive proceeding.
^ N=6,882 cases with 11,127 plaintiffs recorded at any point in the case (5 cases had no plaintiffs recorded in any proceeding); and N=6,691 cases with 13,419 defendants recorded at any point in the case (196 cases had no defendant recorded in any proceeding).
# N=6,881 cases with 8,384 plaintiffs recorded in the substantive proceeding (6 cases had no plaintiff recorded in the substantive proceeding); and N=6,644 cases with 11,922 defendants recorded in the substantive proceeding (243 cases had no defendant recorded in the substantive proceeding).

Any representation of the parties in the substantive proceeding

Table 28 also provides, as a point of comparison, representation rates for any plaintiff (and any defendant) *in the substantive proceeding only*. (See the columns titled 'Substantive proceeding with a represented plaintiff' and 'Substantive proceeding with a represented defendant'.) Representation rates in the substantive proceeding were generally somewhat lower than at any point in the case. This finding is not unexpected given that, in some cases, representatives may be recorded only against a proceeding other than the substantive proceeding. For instance, representatives may be recorded against the first claim but not against the later amended claim that was the substantive proceeding in our analysis.[42] Nonetheless, a focus on the substantive proceeding is useful in providing a picture of whether litigants are represented at arguably the most critical point in the case.

In the Common Law Division, the rate of representation in the substantive proceeding was only slightly less than, and quite similar to, that for any point in the case, for both plaintiffs and defendants. However, differences were greater in the Equity Division, particularly in the *Equity – general – other* list and in the *Probate* list. Of course, there is a greater proportion of matters with multiple proceedings in the Equity Division compared to the Common Law Division. This again points to the fact that decisions about how representation is analysed can affect the representation rates that are obtained and the conclusions that are drawn about how representation varies between lists.

Representation for all parties within the substantive proceeding

We also explored whether every individual plaintiff and defendant within a case had a representative recorded against their name in the substantive proceeding of the case. We again focused on the substantive proceeding as this represents the crux of the case. In addition, the analysis above indicated that, for the most part, the profile of representation does not differ significantly between the substantive proceeding and all proceedings within a case.

As might be expected, there were higher representation rates in the substantive proceeding when representation for *any* party was measured (Table 28) than when representation for *each of the* parties was measured (Table 29).

Although representation rates for the substantive proceeding based on all plaintiffs/defendants in Table 29 were generally lower than those based on any plaintiff/defendant in Table 28, both tables are consistent in showing higher recorded representation rates for plaintiffs than defendants. Table 29 shows 89.9% of plaintiffs but only 51.1% for defendants were represented in the substantive proceeding. Again, lower representation rates among defendants are particularly evident in those lists where defendants may not actively defend their matters.

[42] As described in the methodology section, the substantive proceeding in our analyses was the last proceeding in the case involving a claim or an application under corporations law.

Again, it is important to bear in mind that there is no way from JusticeLink data to distinguish missing information regarding a litigant who was represented from no representation for that litigant. Thus, litigants without a legal representative recorded against their names may include:

- unrepresented litigants
- defendants who are not defending matters (e.g. default judgments or dismissals due to inactivity) and therefore have no representative recorded with the court
- subsequent plaintiffs or defendants (in groups of litigants) within a case who do not have a legal representative recorded against their name, but who are 'represented' by the lawyer named against their co-litigants.

Table 29: Legal representation, based on all plaintiffs and defendants in the substantive proceeding, Supreme Court selected cases

Division and list	All plaintiffs in the substantive proceeding N=8,384		All defendants in the substantive proceeding N=11,922	
	N represented	% represented	N represented	% represented
Common Law Division	**2,897**	**93.7**	**1,849**	**34.3**
Administrative law	122	80.8	256	85.3
Defamation	55	91.7	89	87.3
General	1,022	88.6	1,010	41.4
Possession of land	1,421	98.9	180	8.3
Proceeds of crime	97	98.0	67	65.7
Professional negligence	180	94.2	247	93.2
Equity Division	**4,625**	**87.9**	**4,240**	**65.1**
Commercial	397	97.1	607	90.1
Corporations	1,013	79.3	441	34.4
General – family provision	1,284	98.6	1,229	83.3
General – other	1,193	85.2	1,392	69.7
Probate	187	75.4	118	51.3
Protective	89	85.6	30	26.3
Real property	298	88.4	190	44.6
Technology and construction	140	89.2	210	74.7
Equity – other	24	92.3	23	82.1
Other/unclear	**17**	**53.1**	**5**	**21.7**
Total represented	**7,539**	**89.9**	**6,094**	**51.1**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on representation on all plaintiffs and all defendants in the substantive proceeding.
Note: N=8,384 plaintiffs recorded in the substantive proceeding for 6,881 cases (6 cases had no plaintiff recorded in the substantive proceeding) and N=11,922 defendants recorded in the substantive proceeding for 6,644 cases (243 cases had no defendant recorded in the substantive proceeding).

Representation for multiple plaintiffs or multiple defendants

An alternative analysis of the extent to which all plaintiffs and defendants in each case are represented is presented in Appendix Table A9. This shows the proportion of all selected cases, by division and list, in which the substantive proceeding involved:

- no plaintiffs (and no defendants) with a representative recorded
- only some of the plaintiffs (and only some of the defendants) among groups of multiple litigants with a representative recorded
- all plaintiffs or the only plaintiff (and all defendants or the only defendant) with a representative recorded.

Table A9 shows that cases generally had fewer plaintiffs on average (1.2) than defendants (1.8) recorded against the substantive proceeding for the selected cases (across divisions and lists). In 91.4% of cases, all plaintiffs (or the only plaintiff) had a representative recorded against their name in the substantive proceeding. In 8.2% of cases, no plaintiff had a representative recorded and in less than 1% of cases, some plaintiffs had a representative recorded in the substantive proceeding while others did not.

While the mean number of defendants per substantive proceeding was 1.8 per case overall, there was considerable variation by list, from 1.2 in a few lists up to 2.9 in the *Commercial* list. With a higher average number of defendants than plaintiffs per case, we see more cases where only some of the defendants for a case were represented in the substantive proceeding.

In the Common Law Division, 33.6% of cases had a representative recorded for all defendants in the substantive proceeding, 61.8% of cases had no representative recorded for any defendants, and in 4.5% cases some defendants had a representative recorded in the substantive proceeding while others did not.

In the Equity Division, 59.0% of cases had a representative recorded for all defendants in the substantive proceeding, 34.9% of cases had no representative recorded for any defendants, and in 6.1% cases some defendants had a representative recorded in the substantive proceeding while others did not. As indicated in Table A9, the proportions varied markedly by list.

Representation by entity type

Table 30 examines rates of representation for different types of plaintiffs and defendants. Data is based on the LJF entity type classification for each plaintiff and defendant in our sample of 1,000 cases.

Table 30: Legal representation by LJF coding of plaintiff and defendant types in the substantive proceeding, 1,000 Supreme Court cases

LJF entity type	Cases	
Plaintiff type	**N**	**% plaintiffs represented**
Individual	616	88.6
Government	61	91.8
Business	508	93.3
Other	26	96.2
No plaintiff information	1	0.0
Total	**1,212**	**90.8**
Defendant type	**N**	**% defendants represented**
Individual	1,183	57.8
Government	118	79.7
Business	478	60.0
Other	36	75.0
No defendant (or no defendant information)	34	2.9^
Total	**1,849**	**59.1**

Source: LJF entity coding. Based on a random sample of 1,000 of all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Plaintiffs and defendants recorded in the substantive proceeding were classified according to LJF entity coding. Analysis was based on all plaintiffs and all defendants in the substantive proceeding.
^ This represents one case where there was a defendant but defendant name was missing.

Table 30 indicates that while most plaintiffs have a representative recorded against their name, there was a small amount of variation by entity type.

Higher proportions of 'other' plaintiffs (including NGOs) and business plaintiffs were represented (96.2% and 93.3%, respectively) compared to individuals (88.6%) and government plaintiffs (91.8%). Variation among defendant types was greater. While three-quarters of government (79.7%) and other entity types (75.0%) had a representative recorded, this was the case for just over half of all first individual defendants (57.8%) and first business defendants (60.0%).

Representation at different points in time

In other court reports we have explored the viability of reporting the level of representation at different points in time (filing, defence filing and finalisation). While it would be possible to do this with the Supreme Court data, the complexity of cases meant that it was beyond the scope of the current review.

Improving information about representation

As noted above, a range of factors need to be considered to ensure both the accurate reporting of representation in the Supreme Court and consistent reporting across different jurisdictions. Data analysis and reporting needs to take account of:

- cases which do not have a defendant or respondent
- cases which are not actively defended in court[43]
- whether to report representation for the substantive proceeding, any proceeding or all proceedings in a case (and, if reporting the substantive proceeding, how to take account of details that may only be recorded against another proceeding, such as a cross-claim)
- who is counted as being represented (any, the first or every plaintiff/defendant in a matter)
- whether the type of representative should be reported (e.g. lawyer or authorised officer).

Where a name of a representative is recorded against a party in a proceeding, we can assume that party is represented, at least for that proceeding. However, in the data extracted, the absence of a legal representative name does not necessarily indicate that the party was unrepresented. The extent to which there may be a failure to record on JusticeLink representatives for all parties and proceedings is unclear, as there is no way to distinguish missing information on representation from no representation. Failure to record representation may possibly be more likely to occur where there are multiple proceedings and/or multiple parties and the representative information is recorded in one place but not another (leaving 'blanks' elsewhere). This is an issue that warrants further investigation, as currently it is not possible to confidently report on the extent to which litigants self-represent in the Supreme Court using JusticeLink data. Greater confidence in the data could be obtained if there was field on JusticeLink that allowed recording of self-representation (as distinct from missing data on representation). Consequently, the percentages provided in this entire section on representation will only be an accurate picture of the level of representation in the Supreme Court selected cases if representatives have, in fact, always been entered onto JusticeLink for every litigant in every proceeding for which they had representation.

[43] One way to take account of whether there is no active defendant (and therefore less likely to be a recorded representative), is to assess whether or not a defence or appearance notice was filed. This requires further exploration as an option.

7. How do cases progress in the Supreme Court?

DATA QUALITY – MODERATE
There is no single data field that indicates the complexity of Supreme Court cases and how cases progress through the Supreme Court, but taken together, proceedings, listings and orders provide some insight. Proceeding and listing information appears to be generally accurate and complete and relatively easy to use, directly from JusticeLink, for analytical purposes. The fact of an order is well recorded, but the type of order is inconsistently and at times inaccurately recorded, with categories which are not mutually exclusive. For these reasons, without modification, order data is less useful for understanding case progression.
These caveats regarding the underlying JusticeLink data should be kept in mind when referring to the data in this section.

What is involved in progressing a claim through the Supreme Court and how is this best measured? How active is the court's involvement and how might this vary by the type of case? How do we take account of complexity when describing the progress of the case? Information about how cases progress can provide a baseline against which case management reforms can be assessed. However, this is not a straightforward task.

There are several metrics that may be used to describe the complexity and progress of a case through the Supreme Court, including case proceedings, court events, orders made by the court and the length of time from filing to various events, including finalisation. In this section we explore information available on proceedings, court events (listings) and orders made. The length of time a case takes from filing to finalisation is discussed in Section 10.

Case complexity: proceedings per case

On JusticeLink, Supreme Court cases are made up of component parts described as 'proceedings'.[44] All cases will have a main or substantive proceeding (usually a claim or application). However, one-quarter (24.9%) of cases reviewed in this study involved 2 or more proceedings. Common examples of additional proceedings types recorded on JusticeLink are 'notice of motion civil'[45] and 'cross-claim' (see Table 4 for a list of

[44] Cf. the legal definition of 'proceedings' as all matters that occur in the progress of a case judicially (see http://thelawdictionary.org/proceedings/).

[45] A notice of motion is a written application to the court requesting that an order be made. Generally, a notice of motion is filed with an affidavit that states the facts being relied on and, if relevant, it will specify any documents related to the order that is being sought. Through a notice of motion, one party might seek a suppression order prohibiting the disclosure of the proceedings by the other party or a party might seek an order to restrain the other party from doing something until a further order is made. Notices of motion cited in the course of the casefile analysis often sought orders for costs, directions, adjournments and default judgments.

proceeding types). Within any one proceeding there may be none, one or multiple listings and orders made.

Within the 6,887 Supreme Court selected cases reviewed in this report, there were 10,751 proceedings according to JusticeLink data. Three-quarters (75.1%) of these 6,887 cases involved a single JusticeLink proceeding. A further 12.7% involved 2 proceedings and the remaining 12.2% involved 3 or more proceedings. Only 3.9% (267) of these cases involved 5 or more proceedings.

Table 31 indicates that *Probate* list matters had the highest number of proceedings with an average of 2.9 per case, followed by matters in the *Technology and construction* list (2.8) and the *Commercial* list (2.5).

The *Possession of land* and the *Equity – general – family provision* lists had the lowest number of proceedings per case, with a mean of 1.1.

Table 31: Average number of JusticeLink proceedings per case by list, Supreme Court selected cases

Division and list	Cases	JusticeLink proceedings	JusticeLink proceedings per case
	N	N	Mean
Common Law Division	**2,848**	**4,067**	**1.4**
Administrative law	135	203	1.5
Defamation	51	76	1.5
General	1,017	1,815	1.8
Possession of land	1,395	1,588	1.1
Proceeds of crime	99	138	1.4
Professional negligence	151	247	1.6
Equity Division	**4,017**	**6,684**	**1.7**
Commercial	229	576	2.5
Corporations	1,049	1,370	1.3
General – family provision	1,063	1,154	1.1
General – other	993	2,106	2.1
Probate	186	526	2.9
Protective	95	123	1.3
Real property	245	368	1.5
Technology and construction	134	380	2.8
Equity – other	23	29	1.3
Other/unclear	**22**	**52**	**2.4**
Total	**6,887**	**10,751**	**1.6**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016.

Implications for data quality

Having multiple proceedings (especially multiple claim proceedings) within a single case can complicate data entry; the challenge being to ensure that the relevant order is recorded against the correct proceeding. In the course of our casefile analysis, we noticed that in some files, the proceeding number was written in pencil on the top of orders presumably to ensure that those orders were entered against the correct proceeding on JusticeLink.

The proceedings themselves also vary in complexity. To examine this, we turn to the listings and orders which sit within proceedings.

Listings

Information on court listings provides insight into the range of court-based activities involved in a case. Listings include activities such as directions, motions, mentions, return of subpoenas and the like.[46] Here we focus primarily on listing information from the substantive proceeding of each selected case, but also provide the average number of listings for whole cases in each list.

In most Supreme Court lists, the vast majority of the selected cases involved at least one listing before the court in their substantive proceeding. The notable exception was the *Possession of land* list in which 58.1% of substantive proceedings involved no listing before the court (see Table 32). These include matters that proceed directly to default judgment (or in a small number of cases, to an acknowledgement of a liquidated claim). Nearly 14% of *Common law – general* list cases also involved no listing.

[46] See Table A10 in Appendix 2 for definitions.

Table 32: Listings by list, Supreme Court selected cases

Division and list	Cases	No listing in substantive proceeding	Listings in substantive proceeding	Listings in Case
	N	%	Mean	Mean
Common Law Division	**2,848**	**33.7**	**5.3**	**6.6**
Administrative law	135	3.7	4.1	4.9
Defamation	51	3.9	16.9	18.0
General	1,017	13.8	7.8	8.8
Proceeds of crime	99	2.0	8.2	10.6
Possession of land	1,395	58.1	1.2	1.7
Professional negligence	151	0.7	19.0	20.9
Equity Division	**4,017**	**5.0**	**5.5**	**7.9**
Commercial	229	3.1	11.1	15.0
Corporations	1,049	4.2	2.5	4.5
General – family provision	1,063	5.8	4.7	4.9
General – other	993	4.0	7.7	12.2
Probate	186	8.1	6.0	10.1
Protective	95	3.2	3.3	3.7
Real property	245	8.6	3.6	5.2
Technology and construction	134	6.0	12.1	20.0
Equity – other	23	8.7	7.8	8.2
Other/unclear	**22**	**54.5**	**1.6**	**9.0**
Total	**6,887**	**17.0**	**5.4**	**7.4**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016.

Table 32 also provides the mean number of listings by list for the whole case. As would be expected, the mean number of proceedings was higher for cases than the single (substantive) proceeding, particularly in those lists where matters tend to have multiple proceedings (i.e. *Probate, Technology and construction, Commercial* and *Equity – general – other* lists).

Within the substantive proceeding, the lists with the highest average number of listings included the *Professional negligence* list (19.0 listings per substantive proceeding), the *Defamation* list (16.9), the *Technology and construction* list (12.1) and the *Commercial* list (11.1).

Listing types

Table 33 describes listings by main listing type. For both substantive proceedings and whole cases, nearly three-fifths of all listings were directions, while more than one-fifths were return of subpoena listings. Hearings comprised 6.6% of listings in the substantive proceeding and 7.9% of listings in the selected cases overall. Judgments made up around 2.0% of listings in both substantive proceedings and cases.

Table 33: Listing type, Supreme Court selected cases

Listing type	Substantive proceeding N=37,058	Case (all proceedings) N=50,756
	%	%
Directions	58.6	58.6
Return of subpoena	23.4	20.1
Hearing	6.6	7.9
Other	2.5	2.9
e-Registry	2.3	1.7
Judgment	1.9	2.1
Duty	1.8	2.0
Mediation	1.6	1.4
Motion	1.3	3.3
Total	**100.0**	**100.0**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016.

Listing type by list – substantive proceeding only

Table 34 reports the mean number of listing types in the substantive proceeding by list, and indicates considerable variation between lists.

As might be expected based on the tables above, it appears that it is the high number of directions listings (an average of 7.3 per substantive proceeding) which accounts for the increased overall number of listings in the *Professional negligence* list. Other lists with higher average numbers of directions listings included *Technology and construction* (7.3 directions per substantive proceeding), *Proceeds of crime* (6.9) and *Commercial* (5.4). The lower average number of directions and hearings in lists such as the *Possession of land* list will, in part, reflect the lower proportion of matters which are defended and/or go to hearing.

Table 34 also indicates that matters in the *Defamation* list had, on average, the highest number of hearing listings (2.6 per substantive proceeding), while the average number of listings for return of subpoenas was notably higher in the *Professional negligence* (7.9) and *Defamation* lists (6.0), compared to the average for all lists (1.3). Mediation listings are discussed in the mediation section, below.

Table 34: Listing type by list, for the substantive proceeding in Supreme Court selected cases

Division and list	Directions	Hearing	Judgment	Return of subpoena	All other listings
	Mean	Mean	Mean	Mean	Mean
Common Law Division	**2.6**	**0.3**	**0.1**	**1.6**	**0.6**
Administrative law	2.4	0.7	0.5	0.2	0.2
Defamation	4.5	2.6	0.6	6.0	3.2
General	4.1	0.5	0.2	2.9	0.5
Possession of land	0.4	0.1	0.0	0.1	0.7
Proceeds of crime	6.9	0.1	0.0	0.2	0.6
Professional negligence	9.9	0.6	0.2	7.9	0.5
Equity Division	**3.6**	**0.4**	**0.1**	**1.0**	**0.5**
Commercial	5.4	1.5	0.4	3.0	0.7
Corporations	2.0	0.1	0.1	0.2	0.3
General – family provision	3.5	0.2	0.0	0.5	0.4
General – other	4.6	0.5	0.1	1.8	0.6
Probate	4.0	0.2	0.0	1.5	0.3
Protective	2.7	0.4	0.1	0.1	0.0
Real property	2.4	0.2	0.0	0.4	0.6
Technology and construction	7.3	1.2	0.3	2.7	0.7
Equity – other	2.7	1.0	0.4	3.6	0.3
Other/unclear	**1.1**	**0.0**	**0.0**	**0.2**	**0.3**
Total	**3.2**	**0.4**	**0.1**	**1.3**	**0.5**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on the substantive proceeding only.
Note: N=6,887 substantive proceedings.

Time to first listing and different listing types

Dates are available on JusticeLink for case creation,[47] proceeding creation (as a proxy for the commencement of a proceeding by the lodgement of documents or a notice of motion), sittings and listings. Thus, it is possible to examine times between various events, such as time to first directions, first hearing or first listing more generally. In this report, however, we explore time to first order rather than time to first listing.

[47] The case creation date is when the case was first entered on JusticeLink and is used here as a proxy for when the case first commenced in the Supreme Court.

Orders

Orders made by registrars and judges provide another metric of progress through the Supreme Court. Here we examine orders, taking into account ***all proceedings*** (not just the substantive proceeding) in the 6,887 cases reviewed.

Type of orders

For the purpose of analysis, we have divided orders into categories of 'procedural' orders, 'interim' orders and 'final' orders.[48] The procedural and interim labels were created and applied by the Foundation, and are not found in JusticeLink. However, the 'final order/judgment' category available in JusticeLink informed our selection of 'final orders'.[49]

We have defined these categories as follows:

- **Procedural orders** relate to the administration or progress of a case such as adjournments, case management orders/directions and subpoena-related orders.[50] Procedural orders will not finalise a substantive proceeding and will not typically update participant status on JusticeLink.[51]
- **Interim orders** are orders on interlocutory matters (e.g. injunctions) or other decisions/orders made in relation to non-substantive proceedings in the case (e.g. a notice of motion) that do not finalise a substantive proceeding, and therefore, will typically not update the participant status on JusticeLink (unless it is enforcement-related).
- **Final orders** relate to the substantive claim or application and usually finalise a matter (e.g. judgment, consent order, dismissal etc.). Final orders will thus update the participant status to a finalising status on JusticeLink (e.g. 'enforceable' or 'non-enforceable', depending on whose favour the order is made in).

[48] Among the specific orders as they appear on JusticeLink were two generic categories: 'orders >' and 'order'. The first, with the greater than sign (N=1,411), we are advised by the court are 'final orders' and have been so included in this report. The second category (N=425) is meant to be used for non-final orders (procedural or interim orders) and has been included with procedural orders.

[49] We did not have access to data on the broad order field 'order category'. However, we were largely able to identify the specific order types that fall under the order category 'final order/judgment'.

[50] An order to set aside a judgment sits somewhere between a procedural order and a final order as sometimes it can set proceedings off again and other times it will be the finalising order. For our purposes, however, we have classified it as a procedural order.

[51] Whether the participant status is updated as a result of a procedural order depends on the type of order and the status of the proceeding. For instance, adjournments can be recorded as 'adjourned – status updated to hearing' or 'adjourned – no status change' depending on the context of the adjournment. Similarly, depending on how it is entered, an order for referral to mediation may also update the participant status but not to a finalising status of 'enforceable' or 'non-enforceable'.

Box 2: How orders have been counted

Again reflecting the complexity and administrative purpose of JusticeLink data and how data has to be extracted, the order data provided could include duplicates. For example, instances where the same order was recorded for each party in the case, if taken at face value, would lead to the same order being counted multiple times. To account for possible duplicates in the data, we selected only orders that had a unique order description (e.g. judgment), a unique date, a unique proceeding number and a unique order identifier. If two or more orders had identical information in all of these fields, we selected only one order.

It is important to note, however, that we retained in our analysis orders that had different identifying numbers even though they had identical information in the other fields – for example, two return of subpoena orders with unique order identifiers that were made in the same proceeding on the same day. Such orders were retained as, without a close review of the casefiles (which was beyond the present scope), it was not possible to determine whether any of these orders were duplicates. To the extent that any such orders were duplicates, they may slightly elevate the overall proportion of these order types reported below.

Table 35 is based on orders made in *all* proceedings of cases. It shows that, overall, 89.6% of all orders in the 6,887 cases reviewed were identified as procedural orders and 2.0% as interim orders. Only 8.4% of all orders were identified by us as 'final orders'. However, as will be discussed in the next section, note that our casefile analysis indicated that, for various reasons, a number of cases were actually finalised based on 'non-final orders' or other notices.

On average, there were 11 non-final orders and 1 final order per case. In the substantive proceeding only, there was an average of 8 non-final orders and 0.9 final orders (see Table 35).

Table 35: Orders made by broad order type in Supreme Court selected cases

LJF broad order type	Orders	Orders	Orders per case	Orders per substantive proceeding
	N	%	Mean	Mean
Final orders	6,982	8.4	1.0	0.9
Non-final orders	76,006	91.6	11.0	8.0
*Procedural orders^*	*74,379*	*89.6*	*10.8*	*7.9*
Interim orders	*1,627*	*2.0*	*0.2*	*0.1*
Total orders	**82,988**	**100.0**	**12.1**	**8.9**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on orders made in all proceedings.
Note: N=82,988 orders made in 6,831 cases. Data was missing for 56 cases with no orders.
^ Includes 424 generic non-final orders recorded as 'order' on JusticeLink (which had a mean of 0.06 per case).

Table 36 provides a summarised list of specific order types within each broad order category. Starting with procedural orders, Table 36 indicates that:

- adjournments were by far the most common orders, comprising over half of both procedural orders (58.3%) and all orders (52.2%)
- 14.0% of all orders related to subpoenas
- 13.5% of all orders were case management orders or directions.

The most common 'interim' orders were those relating to an enforcement order being granted or a writ issued (34.2% of interim orders and 0.7% of all orders) and orders arising from notices of motion.

Noting again that the data included final orders made in any proceeding within a case, more than one-third (36.8%) of all final orders were recorded as consent judgment/orders (3.1% of all orders). Of note, 20.3% of all final orders were a generically described 'other' order.[52] Only 0.9% of final orders were recorded as 'judgment'.

[52] All but 7 of the orders in the 'final order – other' category were 'orders >' (N=1411).

Table 36: Orders made by specific order type in Supreme Court selected cases

Procedural orders			
	N	% of procedural orders	% of all orders
Adjourned	43,344	58.3	52.2
Subpoena-related orders	11,606	15.6	14.0
Case management orders/directions	11,184	15.0	13.5
Listing related order	6,858	9.2	8.3
Reserved judgment	611	0.8	0.7
Order	424	0.6	0.5
Procedural order – other	313	0.4	0.4
Transfer to/within Supreme Court	27	0.0	0.0
Set aside	12	0.0	0.0
All procedural orders	74,379	100.0	
Interim orders			
	N	% of interim orders	% of all orders
Enforcement order – granted/writ issued	557	34.2	0.7
Notice of motion granted	418	25.7	0.5
Notice of motion dismissed/refused	385	23.7	0.5
Injunction	214	13.2	0.3
Notice of motion withdrawn	30	1.8	0.0
Interim order – other	12	0.7	0.0
Enforcement-related order/ dismissed/refused/set aside	11	0.7	0.0
All interim orders	1,627	100.0	
Final orders			
	N	% of final orders	% of all orders
Consent judgment/order	2,572	36.8	3.1
Other	1,418	20.3	1.7
Default judgment	742	10.6	0.9
Dismissal inactivity	723	10.4	0.9
Dismissal other	509	7.3	0.6
Application granted	415	5.9	0.5
Dismissal by consent	313	4.5	0.4
Discontinued	172	2.5	0.2
Judgment	63	0.9	0.1
Transfer by Supreme Court	55	0.8	0.1
All final orders	6,982	100.0	
All orders	**82,988**		**100.0**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on orders made in all proceedings.
Note: N=82,988 orders made in 6,831 cases. Data was missing for 56 cases with no orders.

Number of orders per list

Table 37 indicates the average (mean) number of orders per list for the selected cases, including non-final orders and final orders. Again, the analyses below relate to the whole case, not just the substantive proceeding, to indicate the full range of orders involved in finalising these matters.

Table 37: Average number of specific orders made per case by list in Supreme Court selected cases

Division and list	Cases	Non-final orders[a]	Final orders	All orders
	N	Mean	Mean	Mean
Common Law Division	**2,848**	**9.6**	**1.0**	**10.6**
Administrative law	135	7.1	0.9	8.0
Defamation	51	26.9	1.0	27.9
Proceeds of crime	99	12.4	0.6	13.0
General	1,017	15.7	1.0	16.7
Possession of land	1,395	2.0	1.1	3.1
Professional negligence	151	33.1	1.2	34.3
Equity Division	**4,017**	**12.0**	**1.0**	**13.0**
Commercial	229	29	1.0	30.0
Corporations	1,049	6.2	1.0	7.2
General – family provision	1,063	5.7	1.0	6.7
General – other	993	18.2	1.1	19.3
Probate	186	13.1	0.6	13.7
Protective	95	5.8	1.0	6.8
Real property	245	8.3	1.0	9.3
Technology and construction	134	40.4	1.2	41.6
Equity – other	23	18.7	0.7	19.4
Other/unclear	**22**	**18.8**	**1.0**	**19.8**
Total	**6,887**	**11.1**	**1.0**	**12.1**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on orders made in all proceedings.
a Includes procedural, interim and 'unclear' orders.

Overall, the selected cases had an average of just over 12 orders per case, 11 of which were procedural or interim orders. However, the average number of orders per case varied considerably by list. The lists with highest average number of orders per case were:

- *Technology and construction* (41.6 orders per case)
- *Professional negligence* (34.3)
- *Commercial* (30.0)
- *Defamation* (27.9).

The lists with the lowest average number of orders per case were:

- *Possession of land* (3.1 orders per case)
- *Equity – general – family provision* (6.7)
- *Protective* (6.8)
- *Corporations* (7.2).

Procedural orders per list by order type

As indicated above, adjournment was by far the most common type of order, being not only the most common procedural order, but also the most common order overall. Table 38 is based on all procedural orders in the substantive proceeding of the selected cases. It separates out adjournment orders from other common procedural orders, by list.

Table 38: Average number of specific procedural orders made per case by list, Supreme Court selected cases

Division and list	Cases	Adjournment	Subpoena-related orders	Case management orders/ directions	All other procedural orders
	N	Mean	Mean	Mean	Mean
Common Law Division	**2,848**	5.1	2.1	1.2	0.9
Administrative law	135	4.2	0.4	1.2	1.1
Defamation	51	15.1	5.0	3.2	3.5
General	1,017	8.3	0.1	2.5	0.9
Possession of land	1,395	8.4	3.6	2.0	1.4
Proceeds of crime	99	1.0	0.1	0.3	0.3
Professional negligence	151	16.2	11.7	2.5	2.0
Equity Division	**4,017**	7.1	1.4	1.9	1.3
Commercial	229	14.8	4.2	5.3	4.1
Corporations	1,049	3.7	0.8	1.0	0.6
General – family provision	1,063	4.0	0.6	0.6	0.6
General – other	993	11.1	2.2	2.7	1.7
Probate	186	7.7	2.2	2.3	0.7
Protective	95	3.0	0.4	1.9	0.5
Real property	245	5.5	0.4	1.1	1.1
Technology and construction	134	21.6	2.4	8.2	6.9
Equity – other	23	8.2	4.3	3.8	2.4
Other/unclear	**22**	7.7	6.7	3.7	0.7

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on all procedural orders made in the substantive proceeding.
Note: N=6,887 cases.

The lists with the highest average number of adjournments (in the substantive proceeding) were:

- *Technology and construction (*21.6)
- *Professional negligence* (16.2)
- *Defamation* (15.1)
- *Commercial* (14.8)
- *General – other* (11.1).

Table 38 also indicates a notably high average number of subpoena-related orders in the *Professional negligence* list (11.7 per substantive proceeding) and case management orders/directions in the *Technology and construction* list (8.2).

Data definition and quality – orders

Our analysis of orders is primarily based on a JusticeLink field called 'order type' which includes specific order types. JusticeLink also has a broader field called 'order category' (which includes categories such as 'final judgment/order', 'case management', 'arbitration/mediation orders', 'interlocutory', 'judgment on an unliquidated claim' and so on), that the specific order types collapse into. This broader field was not included in the data provided to us but may give more insight into the categorisation of order data.

In addition to the 'order category' and 'order type' fields, free text information can be entered on JusticeLink to more fully explain an order. For instance, an order type described in our data as 'consent order', also had the following displayed on JusticeLink in free text as: 'final judgment/order consent orders: mediation results – matter settled'. This text field data would be useful for a more in-depth analysis of orders.

Box 3: JusticeLink field 'outcome type'

JusticeLink also includes a field 'outcome type' which has three categories: 'administrative', 'chamber', or 'listing event'. As noted earlier, this field was purpose built for entering orders in criminal matters so that if an order was entered under 'listing event', it would send that information to other linked systems/databases (e.g. that of Police and Corrections).

While this is a compulsory field even for civil cases, our review of casefiles and JusticeLink data revealed that it is not reliably applied, with for instance, some orders that should have been classified as 'listing event' being entered as 'chamber' or 'administrative'. We are informed that the three different outcome types should be utilised as follows:

- **Administrative:** to fix errors, move listings, redo entries, enter default judgments and the like
- **Chamber (registrar or judge):** to change dates, process probate matters and so on
- **Listing event (registrar or judge):** reserved for recording activity that occurs in open court where there is a list date in the diary.

Were this field to be consistently and accurately applied in the Supreme Court for civil matters, it would allow separate reporting of the court's administrative work compared to in court case management work, for example.

Progress by elapsed time

Data definition and quality

The progress of matters can of course also be discussed in terms of the time taken from one point to another – for instance, from filing to first defence response (see Section 5), filing to first court-based event (e.g. adjournment, case management order/directions, hearing) or order, and filing to finalisation (see Section 8).

A range of factors will influence the time taken between various events in different cases. Some of these will be within the influence of the court, while others will not. Factors outside of the control of the court can include:

- the time taken to serve a statement of claim or summons on a defendant
- whether claims or applications are defended (where relevant)
- the nature and complexity of the case
- time taken by the parties to respond to each other
- statutory timeframes relevant to the case.

These factors need to be kept in mind when reviewing temporal data.

Data-wise, there are also a number of factors that complicate time-based analyses of case progress. There are challenges with:

- identifying the commencement date of the case when the case commenced in a different jurisdiction
- lags between the dates events occurred and when they are entered onto JusticeLink
- clarifying exactly what a date relates to in what is a complex system.

In the Supreme Court in particular, temporal analyses also need to take account of multiple proceedings. Apart from an overall case-based analysis of time from filing to finalisation, elapsed time between some other events is more meaningful *within* proceedings. The following analyses are based on times *within* the substantive proceeding of each case.

The 'start date' within a proceeding is the date when that proceeding was first created on JusticeLink (proceeding creation date). Cases will generally be created on JusticeLink on the day of or in the days following filing. If there is a single proceeding, or the substantive proceeding is the first proceeding (which is most commonly but not always the case), this is usually the first 'filing date' for the case.

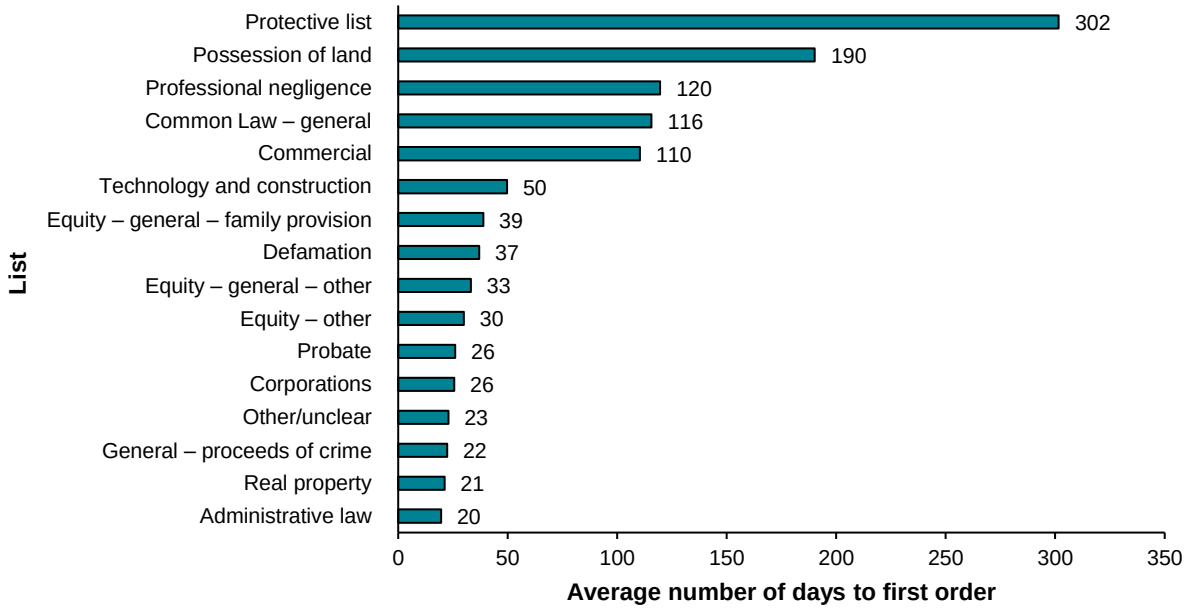
Time to first order in the substantive proceeding

Here we explore the elapsed time from when the substantive proceeding commenced (usually when documents commencing that proceeding were filed) until the first order was made in that proceeding. Note that in 71.8% of proceedings, the first order was a 'procedural order', most commonly an adjournment (56.7% of all first orders). In 26.4% of cases the first order was a final order, including 10.0% which were dismissals for inactivity.[53]

As indicated by Figure 8, the average number of days until the first order varied considerably by list, ranging from 19 days in the *Administrative law* list to 302 days in the *Protective* list. Again, to fully appreciate this variation, it is important to understand the nature of business in each list. The caution for any temporal analysis of whole divisions or whole courts is that this variation (due to a diverse range of factors) will be masked.

[53] Out of N=6,795 cases in which there was an order date attached to the first order.

Figure 8: Days from the start of the substantive proceeding to first order by list in Supreme Court selected cases



Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on the substantive proceeding.
Note: N=96 cases were excluded, of which 92 had no order date and 4 had a date prior to the start date.

We also examined how time to first order may vary when the first order is an adjournment compared to another procedural order (e.g. case management orders/directions or return of subpoena). Table 39 indicates that the average time to the first adjournment was shorter than the time to the first other procedural order in all lists but the *Protective* list. Time to the first adjournment varied from 16.6 days in the *Administrative law* list to nearly 400 days in the *Protective* list.

Time to the first other procedural order ranged from nearly 50 days in the *Corporations* list to 251 days in the *Protective* list.

Table 39: Average number of days from the start of the substantive proceeding to first order in Supreme Court selected cases

Division and list	Cases	To first adjournment	To first other procedural order	To first order of any type
	N		Mean days	
Common Law Division	**2,815**	**115.2**	**193.6**	**143.2**
Administrative law	133	16.6	109.6	19.6
Defamation	51	39.5	106.4	37.0
General	98	131.4	217.6	115.6
Possession of land	1,001	164.5	173.6	190.2
Professional negligence	1,381	128.2	241.8	119.6
Proceeds of crime	151	62.9	123.9	22.3
Equity Division	**3,957**	**46.6**	**122.9**	**43.0**
Commercial	228	120.0	172.5	110.3
Corporations	1,033	24.3	49.6	25.6
General – family provision	1,059	39.0	131.6	38.8
General – other	983	37.0	133.9	33.2
Probate	166	34.2	116.4	26.0
Protective	94	399.7	251.0	301.6
Real property	241	20.3	76.4	21.2
Technology and construction	132	53.3	134.8	49.7
Equity – other	21	30.0	47.5	30.0
Other/unclear	19	**1.5**	**43.2**	**22.9**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on the substantive proceeding.
Notes: N=6,791 cases. N=96 cases excluded, of which 92 had no order date and 4 had a date prior to the start date.

Mediations

DATA QUALITY – LOW
JusticeLink captures court-ordered mediation, but not mediation initiated by the parties. Furthermore, our casefile analysis indicated that even court-ordered mediation is not reliably recorded on JusticeLink. In addition, mediation order data and mediation listing data did not match.

Another key area of policy interest is the degree to which mediation is used within courts to bring matters to resolution, ideally more quickly. Mediations were represented in the data as listings and as orders. There were 604 listings in total recorded for a mediation and 441 mediation orders in the substantive proceeding of the selected cases. These are discussed below.

Mediation listings

There could be more than one mediation listing within the substantive proceeding for a case (e.g. for mediations on different days). As indicated on Table 40, most (71.2%) of these mediation listings were in *Equity – general – family provision* list cases and a further 13.6% were in the *Equity – general – other* list cases.

Of note, the mediation listing data did not appear to match well with the mediation orders data, particularly in the *Common law – general* list, which had far fewer listings for mediations than mediation orders. In contrast, while 71.2% of mediation listings were recorded in the *Equity – general – family provision* list, only 33.3% of mediation orders were reported in this list. As we did not examine the relationship between mediation listings and orders, the reasons for this would need to be further explored.

Table 40: Mediation listings and orders in the substantive proceeding by list, Supreme Court selected cases

Division and list	Mediation listings N=604	Mediation orders N=441
	%	%
Common Law Division	**6.6**	**40.6**
Administrative	0.0	0.0
Defamation	1.0	0.7
General	3.3	27.7
Possession of land	2.0	0.5
Proceeds of crime	0.0	0.0
Professional negligence	0.3	11.8
Equity Division	**93.4**	**59.4**
Commercial	0.0	7.3
Corporations	0.5	0.0
General – family provision	71.2	33.3
General – other	13.4	10.0
Probate	6.0	1.6
Protective	0.0	0.0
Real property	2.0	0.5
Technology and construction	0.3	6.8
Equity – other	0.0	0.0
Other/unclear	**0.0**	**0.0**
Total	**100.0**	**100.0**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on the substantive proceeding. Each substantive proceeding may have more than one mediation listing or order.

Mediation orders – data quality

JusticeLink data on mediation orders in Supreme Court matters appears to be considerably limited for a number of reasons. First, only court-ordered mediation is recorded on JusticeLink. Any other mediation initiated by the parties (that is not court-ordered) is not recorded.

Second, our analysis of casefiles compared to JusticeLink records suggested that JusticeLink data may also considerably undercount court-ordered mediation. Only 2 out of 12 cases in our casefile sample, where the court had ordered mediation, were found to have a corresponding order entered on JusticeLink using the order category and type 'arbitration/mediation orders – refer to mediation'. The remainder had this information recorded as free text within an adjournment order.[54]

Finally, if the policy interest lies in the degree to which parties negotiate within cases, then information on settlement conferences – be they judicial settlement conferences, settlement conferences in chambers or informal settlement conferences (if available) – may also be relevant. However, while settlement conferences and the like may be recorded in a free text field, this too is not systematically recorded in any data field that can be readily extracted from JusticeLink. Of note, approximately one-quarter of the random casefile sample we reviewed (N=100) mentioned either mediation or settlement conferences between the parties being in motion or having taken place. Nearly one in three of these cases (29.1%) involved a settlement conference.[55]

Mediation orders – findings

Data on mediation orders was provided to us separately from the data on other types of orders reported above. In JusticeLink's order category field there is a value 'arbitration/mediation orders' and if selected, the order type 'refer to mediation' is able to be selected.[56] This order type is used to record orders made by the court for mediation.

Table 41 shows the proportion of the selected cases with orders recorded for mediation in the substantive proceeding, by list. Noting the data limitations described above, this is likely an undercount of both court-ordered mediation and all mediation activity. Table 41 first indicates that 30.5% of cases within the *Professional negligence* list had at least one mediation order recorded in the substantive proceeding, as did 19.4% of cases in the *Technology and construction* list, 12.9% of cases in the *Equity – general – family provision* list and 10.0% in the *Common law – general* list.

Looking across lists, more than one-third (34.4%) of cases with a mediation order in the substantive proceeding were in the *Equity – general – family provision* list. This is to be expected given that s 98(2) of the *Succession Act 2006* (NSW) specifies that the court must

[54] We also found that in three cases where the mediation order had been entered in an adjournment, the words 'SC Sydney mediation' had been added to the title of the adjournment. While the orders made were for court-annexed mediation in all three of these cases, there were other cases where court-annexed mediation was ordered and this additional text was not present.

[55] In family provision cases, as an alternative to court ordered mediation, a judicial officer may order that the parties attend an informal settlement conference but there is no order recorded on JusticeLink that reflects this.

[56] The data that was extracted from JusticeLink also had a small number of orders that were 'refer to mediation (registrar)' (N=11 or 2.8%). However, this is no longer an available order type. For the purpose of the analysis that follows, the two order types have been collapsed into a single category: 'mediation order'.

refer an application for a family provision order for mediation before it considers the application.[57]

The *Common law – general* list accounted for approximately one-quarter of cases with a mediation order (25.6%). The *Professional negligence* list accounted for 11.6%, followed by the *Equity – general – other* list at 10.6% and the *Commercial* list at 7.8%.

Table 41: Cases with a mediation order in the substantive proceeding by list, Supreme Court selected cases

Division and list	Cases N	% of cases with mediation orders within each list	% of cases with mediation orders by list N=398
Common Law Division	**2,848**	**5.4**	**38.4**
Administrative law	135	0.0	0.0
Defamation	51	5.9	0.8
General	1,017	10.0	25.6
Possession of land	1,395	0.1	0.5
Proceeds of crime	99	0.0	0.0
Professional negligence	151	30.5	11.6
Equity Division	**4,017**	**6.1**	**61.6**
Commercial	229	0.0	7.8
Corporations	1,049	3.0	0.0
General – family provision	1,063	12.9	34.4
General – other	993	4.2	10.6
Probate	186	3.8	1.8
Protective	95	0.0	0.0
Real property	245	0.8	0.5
Technology and construction	134	19.4	6.5
Equity – other	23	0.0	0.0
Other/unclear	**22**	**0.0**	**0.0**
Total	**6,887**	**5.8**	**100.0**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on the substantive proceeding. Each substantive proceeding may have more than one mediation listing or order.

Mediation outcomes

Mediation outcomes were not consistently recorded in either the casefiles or JusticeLink. We found some examples in the casefiles of family provision matters where the status/result of the mediation was recorded in the Registrar's (Mediator) Record of

[57] *Succession Act 2006* (NSW). In these matters, the Court can also suggest an informal settlement conference (usually when the estate is small – i.e. less than $200,000).

Proceedings.[58] Other times, the court would be updated on the progress/outcome of mediation by correspondence from the parties' legal representatives. For instance, we saw some cases where there was correspondence from the plaintiff's lawyer indicating that mediation had taken place and that it was unsuccessful, and others where the correspondence indicated that the matter had been resolved or settled.

In terms of available order types, the JusticeLink user guide shows that under the final judgment/order category there is an order type of 'settled at mediation', but we did not see this order being utilised in any of the casefiles where the matter had been settled, nor did we find this order type in the orders data provided to us.[59]

Conclusion re mediation data

In conclusion, JusticeLink data has extremely limited utility presently for answering questions about the extent to which cases in the Supreme Court (a) go to mediation or settlement conferences and (b) are settled. First, mediation activity that is not court-ordered is not recorded on JusticeLink. Second, court-ordered mediation is not reliably recorded. Third, mediation outcomes are documented in a number of different places in the casefiles and on JusticeLink, and cannot be systematically extracted.

[58] These appear to correspond with cases where there was an order for court-annexed mediation.

[59] See Case Management User Guide Version 2.8, p. 84. The example shown in the guide is for a civil case in the District Court so it may be that this order type is not available for Supreme Court matters. If this is not an available order type for Supreme Court cases, then the user guide should detail what procedure to follow to enter a final order if the matter is settled at mediation and that procedure should be consistently applied in order to improve the reliability of mediation data.

8. How are Supreme Court cases finalised?

DATA QUALITY – LOW
The order type categories are at times very broad (e.g. 'order'), not mutually exclusive and, as a result, inconsistently and at times inaccurately recorded. Further, due to a range of system issues, certain final orders cannot be entered correctly onto JusticeLink, and so alternative orders (including procedural orders) are used as a 'work around'. This both reduces the quality of the data and prevents cases from being automatically closed on JusticeLink. Together these factors make it difficult to assess how and when matters are actually finalised. Finalisation flags are also unreliable due to the number of cases being manually updated and closed. As a result of the above issues, the utility of the data to identify the finalising outcome of cases is low.
As not all cases result in an order, the finalising outcomes can only be identified by combining multiple data fields (e.g. orders, discontinuance notices and dates). Further manipulation was also required to identify the finalising outcome from multiple orders/notices recorded on the same date. However, even with these modifications, the resulting 'finalising outcomes' are limited in utility due to the data quality issues above.
These caveats regarding the underlying JusticeLink data should be kept in mind when referring to the data in this section.

An understanding of how civil cases are finalised in the Supreme Court is likely to be of interest to the parties involved as well as to policymakers engaged in designing a client-centred civil justice system. For instance, it is important to know the extent to which the parties taking or subject to action in the Supreme Court are 'successful' or 'unsuccessful'. That is, do they achieve the result they sought (e.g. a certain amount of money, a judgment in their favour, a settlement on agreeable terms, an application granted) or fail to do so (e.g. the matter was dismissed, a judgment in favour of the other side, a settlement for a marginal benefit, an application not granted). In a civil court, it is the parties that determine the extent to which the court is involved in finalising a case and the court is not necessarily informed about any outcomes that occur outside of the court process. However, as will be explained more fully below, JusticeLink administrative data is of limited utility in reporting how a Supreme Court case has finalised.

Identifying 'outcomes' in the Supreme Court

It is not possible from the JusticeLink data to truly appreciate what the outcomes of cases are or what those outcomes mean to each of the parties involved. That type of detail is within the text of judgments, the details of settlements and the minds of the parties. From an analytical perspective, the best indicators of outcomes available in the JusticeLink data are those orders or notices that 'finalise' a case. However, even then we are limited, for

analytical purposes, to the order and notice categories available, rather than the more detailed text descriptions on JusticeLink. Final order types (as defined in Section 7) include:

- judgment
- application granted
- consent judgment
- dismissal with consent
- dismissal due to inactivity
- discontinuance
- transfer from Supreme Court.

However, an analysis of how matters finalise in the Supreme Court needs to take account of the variety and complexity of matters in this jurisdiction. While some matters are relatively straightforward, with single proceedings and few (if any) 'final' orders, other cases involve multiple proceedings, each with multiple orders and multiple 'final' orders. Where there are multiple parties, a single case may include 'successful' outcomes, 'unsuccessful' outcomes and a mix of the two, for different parties and proceedings.

Noting this complexity, the aim of the analysis was – with the data available – to identify the first 'finalising' order or notice in the *substantive proceeding* in the selected cases. We refer to this as the **'finalising outcome'.**

We have examined the substantive proceeding as orders in this proceeding are more likely to be relevant to the key issues in the case. To begin with, we look at 'final orders' as a possible indication of the finalising outcome of the case.

Final orders

One indication that a matter has been finalised is the presence of a 'final order' such as a judgment, an application being granted (or not), a consent judgment, a transfer from the Supreme Court or a dismissal (for whatever reason). The presence of a **final order** in a proceeding will automatically update the participant status on JusticeLink to a finalising status.[60]

In our review of the selected cases, we found an average (mean) of 0.9% final orders per substantive proceeding (see Table 35). At face value, this average may appear to suggest that with just under one final order per proceeding, the finalising order should be clear. However, as indicated in Table 42, the average masks important variation, with 15.1% of the selected cases having no final order, 80.5% having one final order and 4.3% having 2 or more final orders.

[60] In JusticeLink the order category 'final judgment/order' brings up a list of finalising order types that can be entered. All of these finalising orders have a greater than symbol (>) at the end of them which means that they will update the participant status and proceeding status to 'determined', thus automatically triggering the case to change to 'closed' status. If an order without this symbol is selected – for example, if a 'case management' category order type is selected instead of one of the finalising order categories – then the participant and proceeding status will not update. This means that the proceeding will remain 'active' until it is manually updated to determined and closed.

It is important to note that there may be multiple final orders in a single proceeding, including:

- final orders made on the same date, reflecting the complexity of the case outcomes (e.g. dismissal and consent judgment)
- final orders entered on the system on different days (close together or far apart), which may relate to different aspects of the case
- final orders made for or against different parties.

Table 42: Final orders in the substantive proceeding by list in Supreme Court selected cases

Division and list	Cases	No final orders	1 final order	2+ final orders
	N	%	%	%
Common Law Division	**2,848**	**10.8**	**82.9**	**6.3**
Administrative law	135	20.0	70.4	9.6
Defamation	51	11.8	78.4	9.8
General	1,017	18.7	74.3	7.0
Possession of land	1,395	2.2	93.0	4.9
Proceeds of crime	99	44.4	51.5	4.0
Professional negligence	151	7.9	80.1	11.9
Equity Division	**4,017**	**17.9**	**79.2**	**2.9**
Commercial	229	34.5	58.1	7.4
Corporations	1,049	16.2	82.4	1.4
General – family provision	1,063	6.5	92.5	1.0
General – other	993	20.0	74.4	5.5
Probate	186	58.6	40.9	0.5
Protective	95	7.4	86.3	6.3
Real property	245	21.2	76.7	2.0
Technology and construction	134	18.7	75.4	6.0
Equity – other	23	39.1	60.9	0.0
Other/unclear	**22**	**68.2**	**31.8**	**0.0**
Total	**6,887**	**15.1**	**80.5**	**4.3**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on all final orders in the substantive proceeding. A final order usually finalises a matter (e.g. judgment, consent order, dismissal etc.).

Final orders as an indicator of case finalisation

A number of factors affect the utility of 'final orders', as an indication of the finalising outcome of a case.

First, as indicated above, there may be multiple final orders in a proceeding (and of course even more in a case with multiple proceedings). To identify the finalising outcome, we need

a methodology to identify which of these final orders (*if any*) best indicates how the case finalised.

Second, final orders alone do not cover all possible ways that a case may end. For instance, when a plaintiff withdraws from a case, they file a notice of discontinuance and it may be this, rather than an order that 'finalises' the case (discussed below).

Third, as indicated in our analysis below, some cases do not end with a final order or a notice of discontinuance, but rather with what appears in the data to be a procedural order type: 'case management orders and directions'. The reasons for this, and their serious implications, are discussed later.[61] Fourth, some final order types are very broad (e.g. 'orders >'), providing no information about the nature of the order made and *why* the matter finalised. Broad order types are also problematic as they 'overlap' with (i.e. are not mutually exclusive from) more specific order types. This in turn may lead to inconsistency in the way a particular type of order is recorded by different people (e.g. the more general order type 'orders >' may be used by some people instead of the specific order type of 'discontinued').

Finally, our casefile analysis indicated that, for some broad order types (e.g. 'orders >'), there can be several discrete orders within the text description of that order. Thus, several different JusticeLink order types are sometimes collapsed into a single broad order type.

Consequently, an examination of 'final orders' in isolation cannot be used to identify the finalising outcome of a case. Rather, final orders at least need to be analysed in concert with information on notices of discontinuance, procedural orders and case closed date. In addition, there are data quality issues that further limit the ability to draw reliable conclusions about case outcomes from JusticeLink data. We provide more detail about the data quality issues following the presentation of data below.

Notices of discontinuance

The withdrawal of a claim is executed by the plaintiff(s) via a notice of discontinuance. A proceeding may have only a notice of discontinuance or may have both an order and a notice of discontinuance. The relevant order (if there is one) may be a 'discontinued order' or a generic final order type such as 'orders >'. Of course, within a proceeding, one plaintiff may discontinue (on one or more points) while another plaintiff progresses with a case. In this situation there may be a discontinuance notice and/or final order, as well as another type of order (e.g. for another plaintiff or against another defendant in the case). We factor notices of discontinuance into the analysis below. However, the reason for discontinuing a claim is not necessarily disclosed to the court and is not captured on JusticeLink.

How cases 'finalise': outcomes for court users

We explored several different approaches for identifying the 'finalising outcome' of each case before settling on the following. Each method we tried was limited in various ways by the issues raised above and discussed in more detail below. While the approach selected here broadly mirrors that used in our other court reports, it has been varied to take account of the features of this jurisdiction, its matters and the data available. As will be indicated below, this approach still has limitations.

[61] See sections below entitled 'Further data definition and quality issues' and 'How cases finalise'.

Finalising outcome closest to the case first closed date

This review is based on selected cases *first closed in 2016*. Our first approach to identifying the finalising outcome was to find the order or discontinuance notice within the substantive proceeding that was closest to the 'case first closed date' (but not after this date). We included all orders (final, interim and procedural) in this analysis, because we had identified in our casefile analysis that some cases were 'finalising' on procedural orders.

For cases with only one proceeding, the orders or notices attached to that proceeding will logically reflect the best recorded information about the outcomes of the case. For the 25% of cases with multiple proceedings, we would expect that the outcomes attached to the substantive proceeding would best reflect the outcomes of the case. While we cannot be certain of this, this is the reason that we focused only on the substantive proceeding at this point.

Some cases had more than one order or notice on the date closest to the 'case first closed date'. To select only one finalising outcome per case, we applied a hierarchy of orders to prioritise final orders and discontinuance notices over procedural orders and interim orders in the following precise order:

- Final order – judgment
- Final order – application granted
- Final order – consent judgment/order
- Final order – dismissal by consent
- Final order – dismissal
- A notice of discontinuance filed against at least one defendant
- Final order – dismissal for inactivity
- Final order – default judgment (against at least one of the defendants)
- Final order – other
- Final order – transfer by Supreme Court
- Procedural order – case management orders/directions
- An interim order – enforcement (order dismissed or order granted)
- Any other interim order
- Any other procedural order or unclear order
- No information on orders or other outcomes.

Thus, if there was a final order 'judgment' and a procedural order 'case management orders/directions' on the same day, we selected the judgment order for inclusion in the analysis. Similarly, if there was a 'consent judgment/order' and a 'dismissal other', we selected the consent judgment/order. We call this the 'highest finalising outcome'.

The aim of the imposed hierarchy was to include the 'highest' level of finalising outcome where there were two orders or notices on that same day. While this of course will mask the complexity of possible outcomes (e.g. a judgment in favour of one plaintiff and a dismissal for another), it provides an overview of the data. As a point of comparison, Appendix Table A11 includes a second approach which included *all orders* on that day.

Based on the 'highest finalising outcome' method outlined above, a 'finalising outcome' was identified in 6,705 (97.4%) of the 6,887 selected cases (see Table 43). Table 43 suggests that close to one-third (31.0%) of the cases we reviewed had a consent judgment/order as the finalising outcome in the substantive proceeding, and a further 3.1% of these cases resulted in a dismissal by consent. Other prominent finalising outcomes included:

- Dismissal for inactivity (10.8%)
- Default judgment (9.7%)
- Notice of discontinuance (8.3%)
- Applications granted (5.3%).

Each of the above order or notice types provides *some* insight into outcomes for the parties.

However, Table 43 also indicates that in 7.5% of cases, a procedural order, 'case management orders/directions', was the finalising outcome in the case. In a further 11.2% of cases the finalising outcome was 'final order – other', of which the majority (99.5%) were 'orders >'.

Table 43: Finalising outcome in the substantive proceeding closest to the 'first case closed' date, in Supreme Court selected cases

Highest finalising outcome closest to first case closed date (one per substantive proceeding)	N	%
Final order – consent judgment/order	2,079	31.0
Final order – other*	748	11.2
Final order – dismissal inactivity	722	10.8
Final order – default judgment	649	9.7
Notice of discontinuance	557	8.3
Procedural order – case management orders/directions	505	7.5
Final order – dismissal other	413	6.2
Final order – application granted	353	5.3
Procedural order – listing related order	231	3.4
Final order – dismissal by consent	211	3.1
Final order – discontinued	112	1.7
Final order – transfer by Supreme Court	42	0.6
Final order – judgment	39	0.6
Procedural order – subpoena-related orders	16	0.2
Interim order – injunction	10	0.1
Procedural order – other	6	0.1
Interim order – enforcement order – granted/writ issued	4	0.1
Other procedural and interim orders^	8	0.1
Total	**6,705**	**100.0**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on the 'highest-level' order or notice in the substantive proceeding on the date closest to the case first closed date.
Note: Data was missing for 182 cases where the first order (if any) was after the 'case closed date' in the substantive proceeding.
***** Includes the following order descriptions: orders >; declarations >; and final orders >.
^ Includes the following order descriptions: reserved judgment (2); notice of motion dismissed/refused (2); transfer to/within Supreme Court (1); notice of motion granted (1); enforcement order dismissed/refused/set aside (1), unclear order (1).

Of note here are the implications of these findings for answering questions about outcomes using JusticeLink data. For instance, together, these two categories of orders represented the finalising outcome in almost one-fifth (18.7%) of the cases we reviewed. The broad nature of these two categories means that the specific nature of the finalising outcomes was unclear in this substantial proportion of cases. Based on our casefile analyses, we know that these order categories can include judgments, consent judgment and other final order types (recorded within the text of these orders). Because these broad categories have sometimes been used to record specific order types that have their own category, it is not possible from the aggregate data to determine the true proportions of ***any*** of the

specific order types presented above. **This is a significant limitation of the data in answering the question about outcomes for parties.**

Possible reasons for orders being recorded as 'case management orders/directions' or 'orders>' are described below.

A further question relates to those matters where parties reach agreement outside the court but do not report their settlement to the court. These agreements may be recorded on JusticeLink as discontinued or dismissed for inactivity.

Finalising orders within 30 days of case first closed date

In Table 43 above, the date of the finalising outcome closest to the case first closed date was, in a small proportion of cases, at least several months prior to that case first closed date.

Another approach to identifying the highest finalising outcome is to examine the highest-level order or notice (as prioritised above) *within 30 days* of the case first closed date. Thus, if there was a judgment 2 days before the first case closed date and a dismissal on the case first closed date, the judgment would be counted. These figures are presented as Appendix Table A12.

However, our analyses indicated that 89.7% of cases had at least one finalising outcome in the substantive proceeding within 30 days of the case being closed, meaning that just over 10% of cases did not. Cases without a finalising outcome in this period may include cases that were manually closed at least one month (and potentially longer) after the 'finalising' outcome.

Further data definition and quality issues

JusticeLink and finalising orders

As noted earlier, the availability of different order types for data entry depends on the status of the participant and the status of the proceeding.[62] If either status is incorrect in the data, the correct order may not be available for selection on the JusticeLink screen. This is particularly problematic when entering final orders (i.e. orders that finalise or determine a matter). We found many instances where the procedural order type 'case management/orders and directions' was used instead of a final order type. Reasons for this could be: the judgment/order does not fit any available order type; a lack of confidence on behalf of the person entering the data to know what order type to select; or the judgment/order given by the judicial officer was unclear.

As noted earlier, our casefile analysis also indicated that the broad order type 'orders >' was sometimes selected in place of more specific final order types. For instance, we also found several cases where final orders were made by consent, but on JusticeLink the order type 'orders>' rather than 'consent orders >' had been selected. While the accompanying

[62] See the 'JusticeLink system design' section in the Introduction.

text usually detailed the type of order (e.g. consent order), this text is not available for analytical purposes.

The use of broad and/or inappropriate order types masks the true number of consent orders or other final orders (e.g. dismissal, discontinuance and the like), meaning that they will be undercounted in the data. The same problem exists when final orders are entered as 'case management orders/directions'.

For some Supreme Court matters, there is no final order per se that will finalise the matter, especially in cases where there is no defendant (see Box 4).

Box 4: Identifying final orders

One of the cases we reviewed on the *Corporations* list started with an originating process followed by a summons for examination (which is what the originating process sought). The casefile documented that the examinations were conducted and this activity therefore finalised the substantive matter. However, in our orders data, there was no finalising order type for the case. The determined date in the proceedings data was one day later than the date of the record of proceedings found in the paper file that stated that examinations were conducted and there was to be no adjournment or future listing. In our orders file, there was an entry matching the determined date with the description 'case management/orders and directions' but because we know that this order category does not trigger the system to finalise the case, we assume that it was manually closed. This example shows how the system has no way of recording orders that finalise a case where there is no defendant, again highlighting the limits of the system's defendant-driven design. It also serves to illustrate that it is not always possible to identify how a case has been finalised based on orders data alone.

In sum, there are three main components that must work in harmony for orders data to be reliable:

- JusticeLink configuration: appropriate orders can be selected when required and, in the case of finalising orders, the appropriate order will trigger the case closed status (even in cases where there is no defendant)
- orders made by judicial officers are clear and understood: judicial officers may give orders in different ways or use different terminology and there is not always an opportunity to have this clarified e.g. a motion may be closed but not the whole case
- capacity of data entry personnel: confidence and ability of personnel entering data to select the correct order category and order type.

Notices of discontinuance and discontinued orders

A comparison of JusticeLink data to our casefiles identified limitations in the JusticeLink data provided on notices of discontinuances. Specifically, within our casefile sample we found that, of the 8 cases where there was a notice of discontinuance, half were missing a record of this notice in our JusticeLink data file (see Box 5). The casefile analysis also revealed that for all 9 cases where proceedings were discontinued, there was no final order type recorded that reflected this in our orders data file. In JusticeLink under the final

judgment/order category, there is an available order type of 'discontinued (direct no discontinuance to be filed) note finalised >'. This order type would have been the appropriate order type to enter for these 9 cases. Instead of this order type being selected for those 9 cases, 'orders >' or 'consent order >' were recorded as the final order type. This suggests that when proceedings are discontinued, this information is not always recorded as an order to this effect and it is instead entered as free text in other final judgment/order types.

Box 5: Case example

In the course of our casefile analysis, we also found one case that had a notice of discontinuance in the paper file but when we looked at the JusticeLink data provided on orders, there was no order that reflected this. Neither was there a record of it in the notice of discontinuance data. Yet in the proceeding data provided, the case first closed date was one day later than the date of the notice of discontinuance found in the paper file. This suggests that the case had been manually closed.
This example serves to illustrate how it is not always possible to determine from administrative data alone what outcomes result in the finalisation of a case. Here, what was missing from the data extracted from JusticeLink was a record of the discontinuance and we know from looking at the paper casefile that this outcome is what finalised the case. This is an important finding concerning the reliability of JusticeLink data.

Case first closed date

Both approaches reported above attempted to identify the finalising outcome of cases by comparing dates that orders and notices occurred relative to the date entered on JusticeLink as the 'case first closed date'. Thus, both approaches depend on the case first closed date being accurate. However, there were also issues with the accuracy of this case first closed date in the JusticeLink data.

To explain, cases will automatically close on JusticeLink when certain events occur, such as a final order being entered following a judgment or a consent order, or there being a discontinuance notice filed. In these circumstances, the 'case first closed date' tends to be closely aligned to the date of the finalising outcome. However, some cases need to be manually closed by court staff. Cases may need to be manually closed when the finalising outcome is recorded as a procedural order type such as 'case management order/directions'[63] or when the matter has been finalised by the court, but there are some proceedings still open (for instance a motion for costs).

[63] See discussion above on final orders.

Box 6: Data monitoring

To ensure that cases close as they should, the Manager, Caseload Analysis at the Supreme Court needs to constantly monitor the status of proceedings in first life cases on JusticeLink. If a proceeding is not in a determined status, the Manager will check to see if there are any future listings. They may also liaise with relevant staff (including judge's associates). If there are no future listings and all claims, applications and cross-claims have been dealt with, the proceedings will be manually updated to 'determined' and the case will be considered finalised. However, it is important to note that due to the volume of cases that are monitored, when 'finalised' cases are identified and the proceedings of those cases are manually updated to determined, resultant outcomes/orders are not entered. This means that, depending on the content of orders that have been entered previously, when a case is closed manually there may be no indication on JusticeLink of the specific outcome that resulted in the closure of the case.

Finalisation flags as an indication of finalisation

The orders data provided to us contained two finalisation-related flags that, when used together, can identify how a case finalised. The first flag (Flag A) is triggered by order type only. If the order type was a 'final order', it would return a 'Y' value, otherwise it would be 'N'. This flag was provided for all orders in the file. However, this flag alone could not be used to identify finalised cases because, as discussed above, a number of cases appear to finalise on non-final orders, such as 'case management' orders, and are then manually closed. The flag does not identify these cases.

The second flag (Flag B) is also applied to each order. It returns a value of 'Y' indicating case finalisation when both of the following occur:

- the order is a 'final order' (as per Flag A)
- the order has updated the participant status (e.g. from 'hearing' to 'enforceable').

In theory, Flag B would provide the most reliable indicator of how cases finalise. However, because Flag B also relies on Flag A, if the case was finalised in court by a non-final order type (e.g. 'case management orders/directions') and this was entered accordingly, flag B would return a 'N' value. Thus, although the flags are able to tell us what orders are treated as finalising orders from a data or system perspective, they are not a reliable indicator of how cases finalise in practice. In other words, neither flag is able to reliably identify cases that are closed manually.

9. How do Supreme Court amounts sought compare to awards made?

DATA QUALITY – LOW
As indicated at Question 2 above, missing information on amount sought cannot be distinguished from those cases where amount sought is not relevant.
In the data provided, amounts sought and judgment amounts (greater than $0.00) were recorded for less than 7% of the cases we reviewed, and these were largely in the *Possession of land* list. Moreover, we found from the casefile analysis that judgment amounts are often specified in the text description of other final order types, in particular consent orders and 'orders >', but not recorded as a separate monetary amount. These are, therefore, not available for aggregate analysis. Given these limitations, JusticeLink data does not accurately reflect the differences between amounts sought and awards made in Supreme Court cases more generally.
These caveats regarding the underlying JusticeLink data should be kept in mind when referring to the data in this section.

As noted in Section 2, amounts sought were only recorded in a JusticeLink data field for a subset of Supreme Court matters that involve a specific monetary sum. The number of Supreme Court matters where an amount sought ***and*** an award amount (judgment amount) is recorded in a JusticeLink data field is smaller still. Although both actual amounts sought and judgment amounts may have been recorded on JusticeLink within text fields, these are not available for aggregate analysis.

This section examines information extracted on monetary orders to assess the extent to which amounts sought are in line with the monetary jurisdiction of the Supreme Court, and to examine the extent to which plaintiffs' expectations are met in practice by comparing the size of the amount sought to the size of the judgment amount.

Definition and quality of data on monetary orders

The JusticeLink data provided for monetary orders reports on the following variables:

- Case number
- Proceeding number
- Order ID
- Outcome date (of the monetary order)
- Amount sought and currency ($)
- Judgment amount ($)

- Whether it is a default monetary judgment
- Whether it is costs agreed assessed
- Enforcement total amount
- Order flavour
- Order type
- Order maker type.

There can be multiple monetary orders recorded against the same proceeding number. However, our analysis was based on only unique monetary orders within the substantive proceeding of our selected cases. That is, we elected not to include duplicate monetary orders for the same amounts as this would significantly over-count both amounts sought and judgment amounts. Instead, we excluded from our analysis any subsequent orders from the substantive proceeding where the amount sought ***and*** judgment amount were the same as those specified in a previous monetary order.[64] We also identified and removed 190 orders where both the amounts sought and judgment amounts were $0.00[65] and one order where $0.00 was specified in the amount sought but $937,542.17 was specified in the judgment amount. This left us with a total of 623 orders where both the amounts sought and judgment amounts specified were greater than $0.00. The majority of these (76.1%) were in the *Possession of land* list followed by the *Common law – general* list (19.6%).

Before reporting on the data, it is important to briefly note some limitations. Firstly, it is possible that a proportion of multiple orders that have the same proceeding number are indicative of instances where one order has been superseded (replaced) by another. This is especially likely for those orders with the same outcome date and a similar specified amount. However, in the data provided there is no way of distinguishing between orders that are superseded and orders that apply to different participants (e.g. multiple plaintiffs and/or defendants). Secondly, the data provided reports on the following orders types only:

- Acknowledgement of liquidated claim >
- Consent judgment for monetary amount >
- Consent judgment for possession of goods >
- Consent judgment for possession of land >
- Default judgment for monetary amount >
- Default judgment for possession of land >
- Judgment for monetary amount >
- Judgment for possession of land >.

This means that information on monetary amounts or possession of goods or land recorded within other order types were not captured in the JusticeLink data provided. For example, in the course of the casefile analysis we saw many final orders specifying a monetary amount recorded in consent orders and 'orders >'. It would also assist in the analysis of these data if there was a field on JusticeLink that identified whether the matter was liquidated or unliquidated.

[64] Where the substantive proceeding included multiple monetary orders of different amounts, all were included.

[65] The majority of these (96.8%) were in the *Possession of land* list.

Monetary order amounts sought and judgment amounts

As noted earlier, comparing amounts sought to amounts awarded is limited by the total number of orders for which both an amount sought and a judgment amount greater than $0.00 are recorded on JusticeLink (N=623). Table 44 is based on these 623 orders and indicates that, overall, there was little difference between the amounts sought and judgment amounts. Both had a range of $2,131.15 to $20,244,153.87. The mean amount sought was similar, but slightly lower than the mean judgment amount ($711,102.94 compared to $731,082.67). Overall, the size of the amounts sought and judgment amounts accord with the monetary jurisdiction of the Supreme Court.

Table 44: Amounts sought and judgment amounts for monetary orders in the substantive proceeding, Supreme Court selected cases

	Claim amount		Judgment amount	
	N	%	N	%
<$5,000	2	0.3	2	0.3
$5,001 – $100,000	62	10.0	58	9.3
$100,001 – $200,000	110	17.7	109	17.5
$200,001 – $400,000	199	31.9	203	32.6
$400,001 – $600,000	101	16.2	98	15.7
$600,001 – $800,000	30	4.8	29	4.7
$800,001 – $1,000,000	23	3.7	22	3.5
$1,000,001 – $2,000,000	61	9.8	65	10.4
$2,000,001 – $3,000,000	12	1.9	13	2.1
$3,000,001 – $4,000,000	5	0.8	4	0.6
$4,000,001 – $5,000,000	6	1.0	8	1.3
$5,000,001 – $10,000,000	8	1.3	8	1.3
$10,000,001+	4	0.6	4	0.6
Total	**623**	**100.0**	**623**	**100.0**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on all unique monetary orders in the substantive proceeding where both amounts sought and judgment amounts were greater than $0.00 (N=623).

We also examined the amounts sought and judgment amounts for our pool of 623 orders broken down by list. Half of the orders that had both amounts sought and judgment amounts less than $5,000 were in the *Possession of land* list and the other half were in the *Commercial* list. The majority of amounts sought ranging from $5,001 up to $800,000 were in the *Possession of land* list, while the majority of amounts sought $800,001 and over were in the *Common law – general* list.

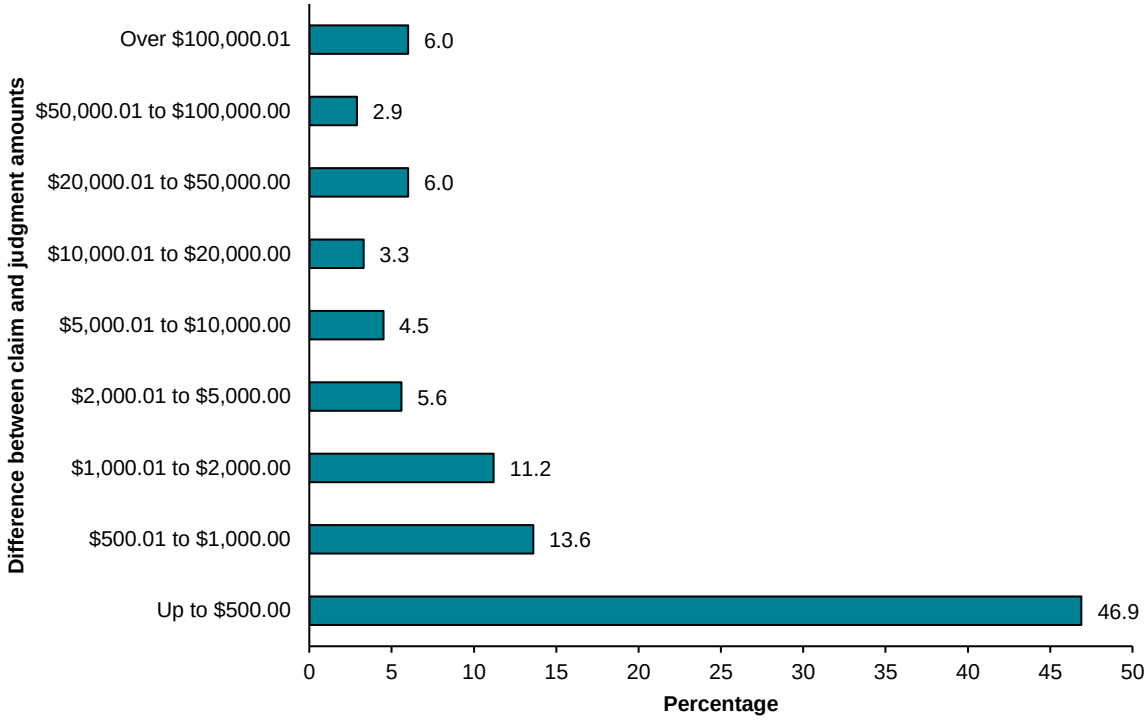
The majority of judgment amounts ranging from $5,001 up to $800,000.00 were in the *Possession of land* list. Where the judgment amount was $800,001 up to $1,000,000, half were in the *Possession of land* list and half were in the *Common law – general* list. The majority of judgment amounts over $1,000,000 were in *Common law – general* list.

Comparing amounts sought and judgment amounts

We also used our pool of 623 monetary orders to examine the difference between the amount sought and the judgment amount. Unlike our previous findings for the lower courts, there were no monetary orders where the judgment amount was less than the amount sought. In just over one-fifth of monetary orders (22.3%), the amount sought was the *same* as the judgment amount. Most of these were default judgments for possession of land (47.5%), followed by default judgments for a monetary amount (17.3%), consent judgments for a monetary amount (16.5%) and judgments for a monetary amount (15.1%). The remaining 77.7% of monetary orders (N=484) had a judgment amount *greater* than the amount sought, of which the majority were default judgments for possession of land (81.4%), followed by default judgments for a monetary amount (15.7%).

For those proceedings where the judgment amount was greater than the amount sought, this dollar figure ranged from $10.10 to $1,601,585.95. Because the data is highly skewed, we have reported it by quartiles. In 25.0% of monetary orders, the difference amount was less than $237.05. Half of the orders had a difference amount that was less than $567.79 and 75% had a difference amount less than $2,738.01 (see Figure 9).

Figure 9: Difference between amounts sought and judgment amounts, with a difference greater than $0 (N=484), in the substantive proceeding in Supreme Court selected cases



Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on all unique monetary orders in the substantive proceeding where both amounts sought and judgment amounts were greater than $0.00 *and* the judgment amount was greater than the amount sought (N=484).

We also examined the 484 orders in Figure 9 – that is, those with a non-zero difference between the amounts sought and judgment amounts – broken down by list. Looking at the distribution of difference amounts by list and order type, the majority of orders with difference amounts up to $500.00 were in the *Possession of land* list (99.6%) and were for default judgments for possession of land (99.6%). Where the difference amount was between $500.01 and $5,000.00, again the majority were in the *Possession of land* list (93.9%) and were for default judgments for possession of land (93.2%).

For those orders where the difference was between $5,000.01 and $50,000, just over half were in the *Common law – general* list (52.2%) and a further 43.3% were in the *Possession of land* list. Most of these were default judgments for a monetary amount (46.3%) or default judgments for possession of land (43.3%).

Finally, for those orders with a difference amount of $50,000.01 and over, the majority were in the *Common law – general* list (88.4%), followed by the *Possession of land*, *Equity – general – other* and *Technology and construction* lists (7.0%, 2.3% and 2.3%, respectively). The majority of these were default judgments for a monetary amount (83.7%), followed by judgment for a monetary amount (11.6%) and default judgment for possession of land (4.7%).

10. How long do Supreme Court cases take to finalise?

DATA QUALITY – MODERATE
While dates are generally complete on JusticeLink, any analysis must be cognisant of what these dates actually reflect. For instance, the date that the JusticeLink status is updated to 'case closed' at times does not accurately reflect when the court has finished dealing with the case. This is largely due to the proportion of matters that need to be manually closed due to system-related limitations. The case first closed date also does not account for those matters that are reactivated after closure.
Each order and notice also has a date attached. However, due to difficulties in identifying the *finalising* order or notice, these may not always be a reliable indicator of case closure. Considerable data manipulation was required to produce the information presented.
These caveats regarding the underlying JusticeLink data should be kept in mind when referring to the data in this section.

Information on how long cases take to finalise is an important element for forward planning demand for court services and arguably is also 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 finalised. 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.

Approaches to case duration

Decisions about what timeframes to analyse also depend upon the questions being asked. If the interest is in the time a matter takes, from a court user perspective, then ideally we would examine when the case first commenced in *any* court, until it was fully resolved for the plaintiff. However, this is beyond the data we have available. Based on the Supreme Court data, the best we can explore is the time from when the case was first filed in the Supreme Court (recognising that some cases have been transferred from other courts) to when it was 'finalised'. The ways in which we have identified 'finalised' are discussed below.

However, if the question concerns how long *the court takes* to deal with matters, then the time points of interest need to be reconsidered. For instance, to take account of the time taken by plaintiffs to serve documents, it may be more useful to calculate the time elapsed between the first return date and the 'finalising' outcome. However, as far as we are aware, data on first return date is not captured on JusticeLink in an extractable format.

Further, certain types of Supreme Court cases may include periods of inactivity, where the parties and the court must wait for factors beyond their control.[66] In the Supreme Court, first life cases[67] can be closed, but then reopened as 'reactivated' cases. However, our analysis only examined information on first life cases up to their first closure, regardless of whether they were (or will be) subsequently reactivated.

Time to finalisation

As previously described, data was provided for all cases first closed during 2016. To examine case duration we analysed, for our selected cases, the time from:

- case creation date to case first closed date
- case creation date to the date of the finalising outcome that was closest to the case first closed date.

The 'case creation date' is the date that the first Supreme Court proceeding in the case was created on JusticeLink.[68] Generally speaking this date will be the same day or within days of the case first being filed in the Supreme Court, and is used here as a proxy for filing date.[69] Similarly, there was little lag between when orders were made and when they were typically entered onto JusticeLink.[70]

Case creation date to case first closed date

The time taken from the case creation date to case first closed date reflects how long the case was *recorded on JusticeLink* as being 'open' at the Supreme Court. However, it is important to note that the case first closed date on JusticeLink may not accurately reflect the date that the case actually finished in the Supreme Court, particularly for some matters that were manually closed on JusticeLink (see Section 8). Note also that while the 'case closed date' indicates that substantive case is closed, activity on a case *may* continue beyond this if, for instance, enforcement or costs proceedings are initiated.[71]

Table 45 presents the time from case creation date to case first closed date as entered on JusticeLink. Supreme Court cases varied considerably in their length. While 8.5% of the selected cases were closed within a month, some cases took many years to complete. Overall, 9.3% of the selected cases took longer than 2 years and there were 8 cases in our data that had been open for more than 10 years, half of which were in the *Protective* list.[72]

[66] Examples include waiting for a child to reach an age where their function can be assessed for damages, for elements to be heard in other courts, or for liquidators to wind up a company, before claiming remuneration.

[67] Cases that have never been closed on JusticeLink for more than 3 days.

[68] Note that some cases may have commenced earlier in other courts.

[69] An alternative date field to use would be 'lodgement date' of the first proceeding, but this date field was not available in our data.

[70] Of those outcomes where there was a lag between the two dates, the majority (87.4%) had a lapsed time of 1–7 days, a further 4.8% had a lapsed time of 8–14 days, 3% had a lapsed time of 15–30 days and the remaining 4.8% had a lapsed time of 31 days or more.

[71] JusticeLink also provides a 'proceeding determined date', which could also be used to identify 'finalisation'. However, we did not have this data field in the data provided.

[72] Cases in the *Protective* list commonly reopen, as they concern the issues of persons who, for reasons of incapacity, are unable to manage their own affairs. The Court uses manual spreadsheets rather than JusticeLink to complete reporting on the *Protective* list.

As indicated in Table 45, of our selected cases:

- 20.7% were closed within 2 months of the case being opened in the Supreme Court
- approximately half were closed within 6 months
- just over 3 out of 4 were closed within 12 months and
- 90.7% were closed within 2 years.

Table 45: Time elapsed between case creation date and case first closed date in Supreme Court selected cases

Time from case creation date to case first closed date	Cases		
	N	%	Cumulative %
0 < 1 month	584	8.5	8.5
1 < 2 months	840	12.2	20.7
2 < 3 months	644	9.4	30.0
3 < 4 months	510	7.4	37.5
4 < 5 months	457	6.6	44.1
5 < 6 months	440	6.4	50.5
6 < 9 months	756	11.0	61.5
9 < 12 months	1,117	16.2	77.7
12 < 24 months	895	13.0	90.7
24+ months	640	9.3	100.0
Total	**6,883**	**100**	

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016.

Note: Data was missing for N=4 cases that returned negative values. The time span is from case creation date (i.e. the date that the first proceeding in the Supreme Court was entered onto JusticeLink) to the case first closed date.

The average (mean) time elapsed between the case creation date and the case first closed date for our selected cases was 9.9 months (see Table 46).

While the difference in average case length by division was only three months (11.8 months in the Common Law Division compared 8.8 months in the Equity Division), the average case length varied considerably by list.

The lists with the longest cases on average were the *Professional negligence* list (30.8 months) and the *Technology and construction* list (27.1 months). These lists had case lengths that on average were 3.1 and 2.7 times as long as the average for all our selected cases, respectively. The lists with the shortest average case lengths were the *Corporations* list (3.9 months) followed by the *Real property* list (4.3 months).

Table 46: Average time elapsed between case creation date and case first closed date by list in Supreme Court selected cases

Division and list	Time from case creation date to case first closed date
	Mean no. of months
Common Law Division	**11.8**
Administrative law	7.6
Defamation	15.2
General	14.3
Possession of land	7.7
Proceeds of crime	18.4
Professional negligence	30.8
Equity Division	**8.8**
Commercial	19.6
Corporations	3.9
General – family provision	6.6
General – other	11.2
Probate	11.0
Protective	13.6
Real property	4.3
Technology and construction	27.1
Equity – other	21.4
Other/unclear	**4.9**
Total	**9.9**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016.
Note: N=6,883 cases. Data was missing for N=4 cases that returned negative values. The time span is from case creation date (i.e. the date that the first proceeding in the Supreme Court was entered onto JusticeLink) to the case first closed date.

Case creation date to finalising outcome

The length of a case will also vary by the type of outcome. To explore this, for our selected cases, we analysed the time from case creation date to the date of the 'finalising outcome' in the substantive proceeding. As in Section 8, here the 'finalising outcome' was defined as the highest-level order or notice in the substantive proceeding that occurred on the date closest to case first closed date.[73]

Note that the order/notice selected is subject to all the limitations described in Section 8. In particular, for cases that had to be manually closed by the court, it is important to note there

[73] See Section 8 for full details, including how the finalising outcome was selected when there were multiple orders on the date closest to the case first closed date.

may sometimes have been a notable delay between the date the finalising order or notice actually occurred and when the case was manually closed on JusticeLink.

Table 47 indicates that in 2.6% of the selected cases, there was no 'finalising outcome' in the substantive proceeding prior to the case first closed date. Among these cases are those with an order in this proceeding after the case first closed date, and those with no order in the proceeding (at the time the data was extracted from JusticeLink).

Table 47: Time elapsed between case creation date and date of the finalising outcome in Supreme Court selected cases

Time from case creation date to date of finalising outcome in the substantive proceeding	Cases		
	N	%	Cumulative %
0 < 1 month	645	9.4	9.6
1 < 2 months	820	11.9	21.8
2 < 3 months	613	8.9	31.0
3 < 4 months	519	7.5	38.7
4 < 5 months	437	6.3	45.2
5 < 6 months	404	5.9	51.3
6 < 9 months	745	10.8	62.4
9 < 12 months	1,084	15.7	78.6
12 < 24 months	844	12.3	91.1
24+ months	594	8.6	100.0
No order before case first closed date	182	2.6	
Total	**6,887**	**100**	

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016.
Note: N=6,887 cases, including 182 cases with no order/notice before the case first closed date. The time span is from case creation date (i.e. the date that the first proceeding in the Supreme Court was entered onto JusticeLink) to the creation date for the finalising outcome closest but before the case first closed date.

In the remaining cases, the elapsed time from case commencement to finalising outcome was:

- less than 2 months for 21.8% of cases
- less than 6 months for just over half of cases
- less than 12 months for nearly 4 out of 5 cases (78.6%) and
- less than 2 years for 91.1% of cases.

The average number of months elapsed between cases commencing and the finalising outcome (as defined above) was 9.6 months.

As was the case for the average time from case commencement to case closed date (Table 46), the time from case commencement to the finalising outcome in the substantive

proceeding was on average longer for Common Law Division than the Equity Division (11.5 months and 8.2 months, respectively). Based on all our selected cases, the finalising order or notice took place on average within three months of the case closed date. However, as indicated in Appendix Table A13, this also varied by list.

The lists with the longest cases on average were the *Professional negligence* list (30.8 months) and the *Technology and construction* list (27.1 months). These lists had case lengths that on average were 3.1 and 2.7 times as long as the average for all our selected cases, respectively.

The lists with the longest average time from case creation until the finalising outcome were the *Professional negligence* list (30.7 months) and the *Technology and construction* list (24.3 months). The average times for these two lists were 3.2 and 2.5 times as long, respectively, as those for all the cases we reviewed. The lists with the shortest average case lengths were the *Corporations* list (3.3 months) followed by the *Real property* list (4.2).

Length of case by finalising outcome type

As would be expected, the time from case creation to finalising order/notice varied considerably by the type of 'finalising' outcome identified in our selected cases (see Table 48).

Focusing on the main finalising outcome types, it took, on average, from case creation:

- 1.8 months to an application being granted or for a transfer out of the Supreme Court
- 4.4 months to default judgment
- 7.9 months to dismissal (other than for inactivity or consent)
- 8.1 months to a discontinued order, but 9.1 months to a notice of discontinuance
- 8.7 months to dismissal (for consent)
- 9.5 months to dismissal for inactivity
- 9.7 months to judgment
- 10.6 months to a consent judgment/order.

Table 48: Average time from case creation date to finalising outcome date by 'highest' outcome type in Supreme Court selected cases

Finalising outcome type	Cases	Time from case creation date to finalising outcome
	N	Mean no. of months
Final order – consent judgment/order	2,079	10.6
Final order – other	748	15.4
Final order – dismissal inactivity	722	9.5
Final order – default judgment	649	4.4
Notice of discontinuance	557	9.1
Procedural order – case management orders/directions	505	12.1
Final order – dismissal other	413	7.9
Final order – application granted	353	1.8
Procedural order – listing related order	231	9.7
Final order – dismissal by consent	211	8.7
Final order – discontinued	112	8.1
Final order – transfer by Supreme Court	42	1.8
Final order – judgment	39	9.7
Procedural order – subpoena-related orders	16	11.3
Interim order – injunction	10	0.0
Procedural order – other	6	15.2
Interim order – enforcement order – granted/writ issued	4	13.1
Procedural order – reserved judgment	2	36.5
Interim order – NOM dismissed/refused	2	0.9
Interim order – enforcement order dismissed/refused/set aside	1	52.7
Unclear order	1	38.9
Interim order – NOM granted	1	3.1
Procedural order – transfer to/within Supreme Court	1	1.9

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016.
Note: N=6,705 cases. 182 cases with no finalising outcome before the case closed date in the substantive proceeding were excluded. The time span is from case creation date (i.e. the date that the first proceeding in the Supreme Court was entered onto JusticeLink) to the highest finalising order/notice in the substantive proceeding closest but before the case first closed date.

However, it also took, on average, from case creation:

- 12.4 months to the procedural order 'case management order/directions', which was the finalising order in 505 cases, and
- 15.4 months to 'final order – other' which was the finalising order in 748 cases.

The 'final order – other' category is largely comprised of orders described on JusticeLink as 'order>' or 'final order>'. Importantly, our casefile analysis indicates that these generic order types frequently included several of the more specific order types listed above. As a result, we cannot assess the true picture of length of time by finalising order type, because some specific orders of the types above are 'hidden' within these broad order categories.

The procedural order 'listing related order' may include orders to: vacate listing dates (on account of matters being finalised, dismissed or discontinued); create a chamber notice of motion in court to be listed; list an unliquidated judgment; refer to *Associate judges* list; or vacate hearing dates and adjourn to case management status.

Table 48 also indicates that in a range of matters, there appears to be only procedural or interim orders prior to the case closed date. Again, there may be other outcomes after the first case closed date that are not covered by this analysis and some cases have reopened.

Table 49 reports the time lapsed in months (as a cumulative percentage) between the case creation date and the date of selected finalising order types. Of note, based on our selected cases:

- close to nine-tenths of 'final order – application granted' outcomes (88.4%) and just under half of 'final order – default judgment' outcomes (47.6%) were recorded within the first 3 months of the case being commenced in the Supreme Court
- by the 6-months mark, approximately 65% of 'final order – dismissal other' outcomes, 60% of 'final order – judgment' outcomes and 50% of 'final order – consent judgment/order' outcomes were recorded
- the majority of 'final order – dismissal inactivity' outcomes (97.1%) and 'notice of discontinuance' outcomes (75.4%) were recorded within 12 months
- the finalising order types of 'final order – other' and 'procedural order – case management orders/directions' took the longest to arrive at, with only 60.0% and 65.3% of these orders recorded within the 12-month mark.

Table 49: Time from case creation date to finalising order/notice date by 'highest' order type in Supreme Court selected cases

		Months from case creation date to finalising outcome				
Finalising order type	**Orders**	**<3**	**<6**	**<12**	**<24**	**24+**
	N	%	%	%	%	%
Judgment	39	28.2	59.0	69.2	89.7	100
Application granted	353	88.4	98.6	99.4	99.7	100
Consent judgment/order	2079	22.9	50.6	72.8	88.7	100
Final order – other	748	28.1	42.9	60.0	82.5	100
Dismissal – other	413	44.1	64.6	80.9	90.8	100
Default judgment	649	47.6	79.5	97.5	99.7	100
Dismissal inactivity	722	0.1	0.3	97.1	99.9	100
Case management orders/directions (procedural order)	505	28.5	45.1	65.3	84.2	100
Notice of discontinuance	557	30.9	49.7	75.4	91.9	100

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016.
Note: N=6,705 cases. 182 cases with no finalising outcome before the case closed date in the substantive proceeding were excluded. The time span is from case creation date (i.e. the date that the first proceeding in the Supreme Court was entered onto JusticeLink) to the highest finalising order/notice in the substantive proceeding closest but before the case first closed date.

Appendix 1: Methodology

Three different sources of data on Supreme Court cases were used in the analysis for this report:

- a sample of 6,887 cases involving a claim matter or an application under corporations law matter that were first closed in 2016, which we drew from JusticeLink data provided to us
- a sample of 1,000 cases randomly drawn from the sample of 6,887 cases above
- a sample of 365 electronic and hardcopy casefiles, including a stratified random sample (by list type) of 100 cases and a further 265 non-random cases.

Further details of these samples are provided below.

Sample of 6,887 cases

The NSW Court Service provided us with data on all Supreme Court cases first closed in 2016, with the exception of uncontested probate matters.[74] This data comprised 7,355 cases involving 11,272 proceedings. They extracted this data from JusticeLink, the NSW Courts management information system. The data was provided 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. We imported these datasets into SPSS, a proprietary statistical software package.

From the 7,355 cases, we selected all cases involving a claim matter or an application under corporations law matter, constituting a sample of 6,887 cases. These 6,887 cases are referred to as '**the selected cases**' throughout this report and form the basis of the bulk of the analysis. Further details regarding how these cases were selected is reported in the introduction to this report under 'How cases were selected and counted in this report'.

For some analyses, only one proceeding from each of these selective cases was used – the '**substantive proceeding**'. For the selected cases that had more than one proceeding,[75] the substantive proceeding was selected to be the last proceeding in the case that involved a claim or an application under corporations law.

Variables or fields from the different spreadsheets provided were brought together into single datasets for analysis purposes. A number of new variables were also constructed from the existing fields (e.g. list type) for the purpose of analysis and reporting.

[74] There were 26,831 uncontested probate pre-application matters that were first closed in 2016. Such uncontested probate cases are routinely separated from other case disposals in the Supreme Court's annual reporting.

[75] Of the 6,887 selected cases, 23.8% had more than one proceeding.

Sample of 1,000 cases

We randomly selected a sample of 1,000 cases from the 6,887 cases above. For these 1,000 cases, we constructed a separate dataset including all plaintiffs and defendants for the substantive proceeding of these cases. This dataset was used for entity-based analysis. We manually coded the entity type of these plaintiffs and defendants. Note that, in constructing this dataset, we deleted duplicate records for entities where these related to an additional legal representative being associated with the entity.

Coding was undertaken separately on plaintiffs and defendants. An initial set of 58 entity codes was collapsed into summarised lists of 16 categories, with these categories then also grouped into 5 broad categories.

Sample of 365 electronic and hardcopy casefiles

The research team examined details of a total of 365 electronic and/or paper casefiles, including a stratified random sample (by list type) of 100 cases and a further 265 non-random cases to investigate specific data issues.

The analysis of the 100 casefiles (paper and e-file attachments as required) was undertaken 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:

- list
- various dates including date case lodged/stamped on originating document, date of first activity from front of file cover and date of final order from file
- details of the first plaintiff and defendant
- evidence of plaintiff being legally represented on originating document
- if there was a defence, the date the defence was first filed
- evidence of defendant being legally represented on first defence document
- description of nature of claim from most recent claim document (e.g. SOC/summons/other originating document, or amended summons or SOC where relevant)
- evidence of mediation anywhere in file
- description of final order
- additional notes/observations/comments.

Focusing on these variables, we ‘audited’ the reliability of information recorded on JusticeLink and gathered information that is not recorded (or not recorded in detail) on JusticeLink (e.g. details of the claim/application).

The review of the 265 purposefully selected casefiles was to investigate specific data issues arising. The research team were provided access to office space and a JusticeLink terminal at the Supreme Court. The team had the great benefit of dialogue with the Manager, Caseload Analysis, throughout the casefile review process.

Categorisation of lists

The lists used in the present report were summarised from those available on JusticeLink. Table M1 shows how JusticeLink lists were combined into the summarised lists reported on.

Table M1: How JusticeLink Supreme Court lists have been summarised within this report

Summarised lists	JusticeLink lists
Common Law Division	
Administrative law	Administrative law
Defamation	Defamation Defamation list
General	Common law general Common law general (default)
Possession of land	Possession of land
Proceeds of crime	Proceeds of crime
Professional negligence	Professional negligence [Supreme Court]
Equity Division	
Commercial	Commercial Commercial arbitration [Supreme Court]
Corporations	Corporations list Corporations registrar's list Corporations registrar's list 11am
General – family provision	Equity general (family provision)
General – other	Equity general Expedition equity
Probate[a]	Probate list (contested probate matters only)
Protective	Protective list
Real property	Real property
Technology and construction	Technology and construction
Equity – other	Admiralty Adoptions Property and family Revenue Other
Other/unclear	
Other/unclear	'General division' without further information as to the division 'General list' without further information as to the division 'No list' Unlisted (and proceeding type is not 'application for request of service')

a The *Probate* list in the present report included only the subset of matters on the JusticeLink *Probate* list that involved contested probate matters – uncontested probate pre-applications are excluded from all analyses.
Note: The present report excluded matters on the following JusticeLink lists: *Certificates [District Court]; Certificates [Supreme Court]; Court of Appeal; Mutual recognition; District Court motions (case management); Motion to vacate;* Unlisted and proceeding type is 'application for request of service'.

Appendix 2: Tables

Table A1: Supreme Court selected cases, by initiating document

Initiating document	N	%
Interlocutory application	122	1.8
Originating process (corporations law)	913	13.3
Statement of claim	3,113	45.2
Summons	2,695	39.1
Summons (no defendant)	44	0.6
Total	**6,887**	**100.0**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016.

Table A2: Profile of Supreme Court selected cases, by JusticeLink list type

Division and list	N	%
Common Law Division	**2,848**	**41.1**
Administrative law	135	2.0
Defamation	51	0.7
General	1,017	14.8
Possession of land	1,395	20.3
Proceeds of crime	99	1.4
Professional negligence	151	2.2
Miscellaneous[a]	0	0.0
Equity Division	**4,017**	**58.3**
Admiralty	4	0.1
Adoptions	1	0.0
Commercial/commercial arbitration	229	3.3
Corporations – registrar's list	916	13.3
Corporations – other	133	1.9
General – family provision	1,063	15.4
General – expedition	1	0.0
General – other	992	14.4
Probate	186	2.7
Protective list	95	1.4
Real property	245	3.6
Revenue	17	0.2
Technology and construction	134	1.9
Equity – other[b]	1	0.0
Other/unclear	**22**	**0.3**
Other general[c]	2	0.0
Other/unclear[d]	0	0.0
No list[e]	20	0.3
Total	**6,887**	**100.0**

a Includes certificates (Supreme Court), applications for mutual recognition (in the Mutual recognition list) and applications for requests of service (unlisted).
b Includes the Property and family list, which is no longer used for new matters.
c Includes matters listed as 'General division' or 'General list' that have no further information as to the division.
d Includes matters in the following lists: Court of Appeal, District Court (case management), Certificates [District Court] and Motion to vacate.
e Includes matters without a recorded list.
Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. List type is based on the list recorded for the substantive proceeding.

Table A3: Number of plaintiffs and defendants by list, Supreme Court selected cases

Division and list	Participant type	Total	One	Two	Three	Four +
		N	%	%	%	%
Common Law Division	**Plaintiff**	**2,847**	**94.8**	**3.6**	**1.0**	**0.5**
	Defendant	**2,798**	**57.3**	**31.5**	**7.1**	**4.1**
Administrative	Plaintiff	135	92.6	5.9	0.7	0.7
	Defendant	133	27.1	28.6	39.1	5.3
Defamation	Plaintiff	51	84.3	13.7	2.0	0.0
	Defendant	50	40.0	34.0	12.0	14.0
General	Plaintiff	1,016	92.2	5.6	1.3	0.9
	Defendant	993	66.9	20.2	6.2	6.6
Possession of land	Plaintiff	1,395	97.8	1.6	0.5	0.1
	Defendant	1,385	51.8	41.8	5.1	1.4
Proceeds of crime	Plaintiff	99	100.0	0.0	0.0	0.0
	Defendant	87	88.5	6.9	3.4	1.1
Professional negligence	Plaintiff	151	87.4	5.3	4.6	2.6
	Defendant	150	58.7	27.3	4.7	9.3
Equity Division	**Plaintiff**	**4,012**	**84.0**	**11.0**	**3.0**	**2.0**
	Defendant	**3,831**	**65.6**	**21.9**	**6.9**	**5.6**
Commercial	Plaintiff	229	84.7	6.6	5.2	3.5
	Defendant	229	57.6	18.3	9.6	14.4
Corporations	Plaintiff	1,049	89.2	7.2	2.1	1.4
	Defendant	967	86.8	7.3	2.2	3.7
General – family provision	Plaintiff	1,061	84.4	10.8	3.4	1.4
	Defendant	1,031	67.5	24.2	6.6	1.7
General – other	Plaintiff	993	79.9	13.7	3.5	2.9
	Defendant	948	43.9	35.4	10.4	10.2
Probate	Plaintiff	183	76.5	16.9	2.7	3.8
	Defendant	167	72.5	19.8	6.0	1.8
Protective	Plaintiff	95	91.6	7.4	1.1	0.0
	Defendant	93	86.0	7.5	4.3	2.2
Real property	Plaintiff	245	75.9	18.4	3.3	2.4
	Defendant	241	62.2	25.3	7.5	5.0
Technology and construction	Plaintiff	134	88.1	10.4	0.7	0.7
	Defendant	132	45.5	27.3	17.4	9.8
Equity – other	Plaintiff	23	87.0	13.0	0.0	0.0
	Defendant	23	82.6	13.0	4.3	0.0
Other/unclear	Plaintiff	22	81.8	13.6	0.0	4.5
	Defendant	15	66.7	13.3	20.0	0.0
Total	**Plaintiff**	**6,881**	**88.5**	**8.0**	**2.2**	**1.4**
	Defendant	**6,644**	**62.1**	**25.9**	**7.1**	**4.9**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Based on the substantive proceeding for each case.
Note: N=6,887 substantive proceedings. Details of plaintiffs were missing for 6 of these proceedings and details of defendants were missing for 243 proceedings.

Table A4: LJF coding of prioritised plaintiff types by list in 1,000 Supreme Court cases

Division and list	Cases	Individual	Business	Government	Other
	N	%	%	%	%
Common Law Division	**401**	**34.2**	**53.1**	**10.9**	**1.7**
Administrative	24	54.2	33.3	4.2	8.3
Defamation	6	100.0	0.0	0.0	0.0
General	139	61.2	20.1	17.3	1.4
Possession of land	194	5.2	90.7	2.6	1.5
Proceeds of crime	14	0.0	0.0	100.0	0.0
Professional negligence	24	95.8	4.2	0.0	0.0
Equity Division	**597**	**57.1**	**37.6**	**2.8**	**2.5**
Commercial	41	17.1	82.9	0.0	0.0
Corporations	141	16.3	74.5	7.1	2.1
General – family provision	164	100.0	0.0	0.0	0.0
General – other	135	60.0	35.6	3.0	1.5
Probate	37	100.0	0.0	0.0	0.0
Protective	8	100.0	0.0	0.0	0.0
Real property	40	47.5	45.0	5.0	2.5
Technology and construction	24	4.2	62.5	0.0	33.3
Equity – other	6	16.7	50.0	16.7	16.7
Other/unclear	**1**	**100.0**	**0.0**	**0.0**	**0.0**
Total	999	47.9	43.7	6.1	2.2

Source: LJF entity coding. Based on a random sample of 1,000 of all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Plaintiffs recorded in the substantive proceeding were classified according to LJF entity coding. Analysis based on one plaintiff per case, selected on the following prioritisation if there were multiple plaintiffs: business, government, other, individual and not specified.
Note: One case in the *Common law – general* list was missing plaintiff ID.

Table A5: LJF coding of prioritised defendant types by list in 1,000 Supreme Court cases

Division and list	Cases	Individual	Business	Government	Other	Missing, inc. no defendant
	N	%	%	%	%	%
Common Law Division	**402**	**60.9**	**19.9**	**15.2**	**2.7**	**1.2**
Administrative	24	4.2	4.2	91.7	0.0	0.0
Defamation	6	0.0	66.7	33.3	0.0	0.0
General	140	32.1	40.7	17.9	7.1	2.1
Possession of land	194	93.8	4.6	1.0	0.5	0.0
Proceeds of crime	14	85.7	0.0	0.0	0.0	14.3
Professional negligence	24	20.8	37.5	41.7	0.0	0.0
Equity Division	**597**	**47.8**	**39.5**	**6.5**	**1.5**	**4.7**
Commercial	41	29.3	68.3	0.0	2.4	0.0
Corporations	142	4.2	77.5	9.2	0.7	8.5
General – family provision	164	94.5	0.6	3.7	0.0	1.2
General – other	135	45.2	41.5	5.9	2.2	5.2
Probate	37	75.7	5.4	0.0	5.4	13.5
Protective	8	75.0	12.5	12.5	0.0	0.0
Real property	40	42.5	40.0	10.0	5.0	2.5
Technology and construction	24	0.0	91.7	4.2	0.0	4.2
Equity – other	6	0.0	0.0	100.0	0.0	0.0
Other/unclear	**1**	**0.0**	**0.0**	**0.0**	**100.0**	**0.0**
Total	1,000	53.0	31.6	10.0	2.1	3.3

Source: LJF entity coding. Based on a random sample of 1,000 of all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Defendants recorded in the substantive proceeding were classified according to LJF entity coding. Analysis was based on one defendant per case, selected on following prioritisation if there were multiple defendants: business, government, other, individual and not specified.
Note: In 34 cases, there was no defendant or the defendant information was missing.

Table A6: LJF coding of prioritised plaintiff and defendant types, Common Law Division cases within sample of 1,000 Supreme Court cases

Common Law Division	Defendant type					
N=401	Individual	Business	Government	Other	No defendant/ missing	Total
Plaintiff type			**% cases**			
Individual	7.0	13.2	11.7	2.2	0.0	34.2
Business	43.6	6.2	2.7	0.5	0.0	53.1
Government	9.5	0.2	0.2	0.0	1.0	11.0
Other	1.0	0.2	0.5	0.0	0.0	1.7
Total	**61.1**	**20.0**	**15.2**	**2.7**	**1.0**	**100.0**

Source: LJF entity coding. Based on a random sample of 1,000 of all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Plaintiffs and defendants recorded in the substantive proceeding were classified according to LJF entity coding. Analysis was based on one plaintiff and one defendant per case, selected on the following prioritisation if there were multiple plaintiffs or multiple defendants: business, government, other, individual and not specified.
Note: N=401 cases in the Common Law Division. One case was missing plaintiff type.

Table A7: LJF coding of prioritised plaintiff and defendant types, Equity Division cases within sample of 1,000 Supreme Court cases

Equity Division	Defendant type					
N=596	Individual	Business	Government	Other	No defendant/ missing	Total
Plaintiff type			**% cases**			
Individual	40.3	9.9	4.0	0.8	2.2	57.2
Business	6.9	26.2	1.5	0.5	2.3	37.4
Government	0.3	1.8	0.7	0.0	0.0	2.9
Other	0.3	1.7	0.2	0.2	0.2	2.5
Total	**47.8**	**39.6**	**6.4**	**1.5**	**4.7**	**100.0**

Source: LJF entity coding. Based on a random sample of 1,000 of all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Plaintiffs and defendants recorded in the substantive proceeding were classified according to LJF entity coding. Analysis was based on one plaintiff and one defendant per case, selected on the following prioritisation if there were multiple plaintiffs or multiple defendants: business, government, other, individual and not specified.
Note: N=596 cases in the Equity Division.

Table A8: Type of notice filed by defendants in defence of case by list, Supreme Court selected cases

Division and list	Cases	Notice of defence only	Notice of appearance only	Both notices	Neither notice
	N	%	%	%	%
Common Law Division	**2,833**	**4.7**	**16.8**	**17.0**	**61.5**
Administrative	135	0.0	88.9	1.5	9.6
Defamation	51	5.9	27.5	56.9	9.8
General	1,002	8.8	20.6	29.2	41.4
Possession of land	1,395	2.5	3.7	2.6	91.2
Proceeds of crime	99	0.0	67.7	0.0	32.3
Professional negligence	151	4.0	10.6	81.5	4.0
Equity Division	**3,899**	**6.1**	**49.2**	**9.8**	**34.9**
Commercial	229	10.5	69.0	5.2	15.3
Corporations	966	1.7	30.3	0.4	67.6
General – family provision	1,063	0.0	81.3	0.1	18.6
General – other	972	13.3	33.1	31.3	22.3
Probate	173	20.8	21.4	23.1	34.7
Protective	94	0.0	20.2	1.1	78.7
Real property	245	10.2	46.5	5.7	37.6
Technology and construction	134	3.7	73.1	3.7	19.4
Equity – other	23	4.3	65.2	8.7	21.7
Other/unclear	**15**	**6.7**	**13.3**	**0.0**	**80.0**
Total	**6,747**	**5.5**	**35.5**	**12.8**	**46.2**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Based on the substantive proceeding for each case.
Note: 140 cases are excluded as there was no defendant recorded.

Table A9: Proportion of plaintiffs (and proportion of defendants) in the substantive proceeding that were represented by list, Supreme Court selected cases

Division and list	Substantive proceeding with 1+ plaintiffs N=6,881				Substantive proceeding with 1+ defendants N=6,644			
	Mean no. plaintiffs	% cases with none/some/all plaintiffs represented			Mean no. defendants	% cases with none/some/all defendants represented		
		None	Some	All		None	Some	All
Common Law Division	**1.1**	**5.4**	**0.2**	**94.3**	**1.9**	**61.8**	**4.5**	**33.6**
Administrative	1.1	15.6	0.0	84.4	2.3	7.5	15.8	76.7
Defamation	1.2	9.8	0.0	90.2	2.0	10.0	6.0	84.0
General	1.1	2.0	0.0	98.0	2.5	39.9	6.9	53.2
Possession of land	1.0	1.0	0.0	99.0	1.6	92.4	2.1	5.5
Proceeds of crime	1.0	2.0	0.0	98.0	1.2	35.6	2.3	62.1
Professional negligence	1.3	2.0	2.0	96.0	1.8	5.3	2.1	92.7
Equity Division	**1.3**	**9.9**	**0.5**	**89.5**	**1.7**	**34.9**	**6.1**	**59.0**
Commercial	1.8	2.6	0.0	97.4	2.9	10.5	5.7	83.8
Corporations	1.2	13.3	0.7	86.0	1.3	67.2	2.9	29.9
General – family provision	1.2	1.4	0.2	98.4	1.4	15.0	3.6	81.4
General – other	1.4	13.6	1.1	85.3	2.1	25.3	10.0	64.7
Probate	1.4	25.1	0.5	74.3	1.4	44.9	4.8	50.3
Protective	1.1	14.7	0.0	85.3	1.2	80.6	3.2	16.1
Real property	1.4	12.7	0.0	87.3	1.8	41.9	9.1	49.0
Technology and construction	1.2	7.5	0.7	91.8	2.1	11.4	20.5	68.2
Equity – other	1.1	8.7	0.0	91.3	1.2	13.0	4.3	82.6
Other/unclear	**1.5**	**59.1**	**0.0**	**40.9**	**1.5**	**73.3**	**6.7**	**20.0**
All matters	**1.2**	**8.2**	**0.4**	**91.4**	**1.8**	**46.3**	**5.4**	**48.2**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on representation status of all plaintiffs and all defendants in the substantive proceeding.
Note: N=6,881 cases with 8,384 plaintiffs recorded in the substantive proceeding (6 cases had no plaintiff recorded in the substantive proceeding); and N=6,644 cases with 11,922 defendants recorded in the substantive proceeding (243 cases had no defendant recorded in the substantive proceeding).

Table A10: Definitions of listing type categories

Listing type	Definition
Directions	Includes all listings with a directions listing type. Directions are heard before a judge or registrar who will make relevant orders (directions) to ensure that the case is ready to be heard at the final hearing.
Duty	Includes all listings with a duty (Common Law) and duty (Equity) listing type.
e-Registry	Includes all listings with an e-Registry listing type.
Hearing	Includes all listings with a hearing listing type.
Judgment	Includes all listings with a judgment listing type.
Mediation	Includes all listings with a mediation listing type.
Motion	Includes all listings with a motion listing type.
Return of subpoena	Includes all listings with a return of subpoena listing type. A subpoena is an order to produce documents by a certain date, time and place. A return of subpoena hearing is usually conducted in open court by a registrar, although judges may also hear the return of subpoena if the return date is close to the trial date. In these hearings, orders can be made in relation to documents provided as per the subpoena.
Other	Includes all listings with the following listing types: applications (including possession and for commission); approval; argument; call-over; costs; debts; evidence on commission; examination; mentions; reasons; referrals (professional negligence); show cause (Common Law and Equity); status conference; status review (Common Law and Equity); submissions; wage or salary.

Table A11: All orders in the substantive proceeding on the date closest to the 'case first closed' date, in Supreme Court selected cases

All orders closest to the case first closed date	Orders	
	N	%
Final order – consent judgment/order	2,100	24.2
Procedural order – listing related order	1,579	18.2
Procedural order – case management orders/directions	890	10.3
Final order – other	872	10.0
Final order – dismissal inactivity	722	8.3
Final order – default judgment	685	7.9
Final order – dismissal other	413	4.8
Notice of discontinuance	380	4.4
Final order – application granted	353	4.1
Final order – dismissal by consent	211	2.4
Procedural order – adjourned	183	2.1
Final order – discontinued	115	1.3
Final order – transfer by Supreme Court	45	0.5
Final order – judgment	41	0.5
Procedural order – subpoena-related orders	41	0.5
Procedural order – other	14	0.2
Interim order – injunction	10	0.1
Procedural order – reserved judgment	7	0.1
Interim order – enforcement order – granted/writ issued	7	0.1
Procedural order – transfer to/within Supreme Court	3	0.0
Interim order – NOM dismissed/refused	3	0.0
Interim order – NOM granted	1	0.0
Interim order – enforcement order dismissed/refused/set aside	1	0.0
Interim order – other	1	0.0
Unclear order	1	0.0
Total	**8,678**	**100.0**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on all orders or notices in the substantive proceeding on the date closest to the case first closed date.
Note: Data was missing for 182 cases where the first order (if any) was after the 'case closed date' in the substantive proceeding.

Table A12: 'Highest-level' orders in the substantive proceeding within 30 days of 'case first closed' date, in selected Supreme Court cases

'Highest-level' order within 30 days of case closed date	N	%
Final order – consent judgment/order	2,110	34.2
Final order – other	800	12.9
Final order – dismissal inactivity	721	11.7
Final order – default judgment	646	10.5
Final order – dismissal other	395	6.4
Notice of discontinuance	362	5.9
Final order – application granted	352	5.7
Procedural order – case management orders/directions	294	4.8
Final order – dismissal by consent	206	3.3
Final order – discontinued	106	1.7
Procedural order – listing related order	60	1.0
Final order – judgment	40	0.6
Final order – transfer by Supreme Court	39	0.6
Procedural order – adjourned	36	0.6
Procedural order – subpoena-related orders	4	0.1
Procedural order – other	3	0.0
Interim order – injunction	2	0.0
Procedural order – reserved judgment	1	0.0
Interim order – NOM dismissed/refused	1	0.0
Total	**6,178**	**100.0**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. Analysis was based on the 'highest-level' order or notice in the substantive proceeding per case within the 30 days prior to the case first closed date. Where there were multiple orders for any case during this period, the orders were prioritised to select final orders over procedural or interim orders, as per list specified.
Note: 709 cases (10.3% of 6,887) were missing as they had no 'finalising outcome' (order or notice of discontinuance) in the substantive proceeding within the 30 days prior to the first case closed date.

Table A13: Average time elapsed from case creation date to (a) case first closed date and (b) finalising outcome date by list, in Supreme Court selected cases

Division and list	Time from case creation date to case first closed date	Time from case creation date to 'finalising outcome'
	months	months
Common Law Division	**11.8**	**11.5**
Administrative law	7.6	7.4
Defamation	15.2	15.1
General	14.3	13.8
Possession of land	7.7	7.6
Proceeds of crime	18.4	17.5
Professional negligence	30.8	30.7
Equity Division	**8.8**	**8.2**
Commercial	19.6	18.6
Corporations	3.9	3.3
General – family provision	6.6	6.4
General – other	11.2	10.8
Probate	11.0	10.7
Protective	13.6	13.5
Real property	4.3	4.2
Technology and construction	27.1	24.3
Equity – other	21.4	15.2
Other/unclear	**4.9**	**4.3**
Total	**9.9**	**9.6**

Source: JusticeLink data. Selected cases refer to all Supreme Court cases involving a claim matter or an application under corporations law matter that were first closed in 2016. The time span is from case creation date (i.e. the date that the first proceeding in the Supreme Court was entered onto JusticeLink) to (a) the case first closed date and (b) the creation date for the finalising outcome in the substantive proceeding closest to but before the case first closed date.
Note: N=6,705 cases. 182 cases were excluded as they had no order/notice before the case first closed date.