

Data insights
in civil justice

NSW District Court



Data insights in civil justice:

NSW District Court

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Shortened forms

ABN	Australian Business Number
ABR	Australian Business Register
ACN	Australian Company Number
ATO	Australian Taxation Office
CALD	Culturally and linguistically diverse
Foundation	Law and Justice Foundation of New South Wales
LAW Survey	Legal Australia-Wide Survey
LJF	Law and Justice Foundation of New South Wales
LGA	Local Government Area
MI	Management information
NCAT	New South Wales Civil and Administrative Tribunal
NGO	Non-government organisation
NPA	National Partnership Agreement on Legal Assistance Services
NSW	New South Wales
ROP	Record of Proceedings
ROGS	Report on Government Services
ROS	Return of subpoena
SOC	Statement of claim
UCPR	Uniform Civil Procedure Rules
WA	Western Australia

Key messages

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 District Court data.

The role of the District Court

The District Court is the intermediate court in the state's judicial hierarchy. In its civil jurisdiction the District Court deals with motor accident and work injury cases irrespective of the amount claimed, and other torts, mercantile (commercial) and other claims up to \$750,000.¹ The District Court also hears appeals of Local Court and Children's Court care proceedings. District Court claims can be filed at a District Court registry or online. During our 2015 review period, 17.8% claims first finalised were filed online.

Claims in the District Court are divided into two broad groups – case managed and not case managed. Case managed claims, which are more likely to involve a judicial decision, generally include unliquidated claims (those where the amount of the award is to be determined by the court) and defended liquidated claims (where a specific sum is sought). Undefended liquidated claims tend not to be case managed.

The value of data on civil justice

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

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

Information on how long cases take to resolve and the likely outcomes may also be of value to potential plaintiffs and defendants in making informed decisions on bringing and defending claims.

¹ Though it may deal with matters exceeding this amount if the parties consent. District Court of New South Wales, *Annual Review, 2015*, p. 5.

District Court data system and data quality

Information about District Court matters is held on JusticeLink, the same management information system that is used by the Local and Supreme Courts. The data in this system is held as unit records (such as by proceeding number or entity identifier) in a large number of data tables. The data analysed for this report is taken direct from these data tables by court staff.

Table 1 provides a summary of our assessment of the utility of JusticeLink data. It indicates that the utility of the data to answer the policy questions posed varied considerably, with some data items requiring additional classification and manipulation to produce the tables presented in this report. In its current form, data cannot be taken directly from JusticeLink to answer such questions without this level of effort.

There are a number of changes that we have identified which could improve the reliability and utility of the data for policy development, court management and administration. These include:

- improving the accuracy of information on claim type, particularly for *Mercantile law* matters
- collecting data on 'entity type' using more detailed and well-defined categories (e.g. local council, state government agency, business, not-for-profit). 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
- identifying when insurers are involved in matters as interested non parties
- developing a small set of mutually exclusive outcomes which match the determined date (e.g. lapsed, withdrawn/discontinued, dismissed, consent/settled, and judgment in favour of the plaintiff)
- 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.

Table 1: LJF assessment of data quality, summary

Data item	LJF assessment of data quality	Comment
Matter	Good	The types of applications to the District Court are well captured, with the distinction between proceeding types within a case facilitating this (although in the data, appeals are included within claim proceedings). However, it should be noted that the District Court only reports listed (case managed) matters in its Annual Review. By contrast, the Local Court reports all matters (including the equivalent of not-listed matters). This undermines a direct comparison of workload between the courts.
Claim type	Moderate	Good for distinguishing at the highest level between <i>Torts</i> , <i>Mercantile law</i> and <i>Other</i> claim types. Not bad within <i>Torts</i> . Potential issues relate to multiple claims and some over-use of the 'other' categories Poor within <i>Mercantile law</i> claims.
Amount sought	Limited	Most <i>Torts</i> are unliquidated and do not specify an amount. A large proportion of listed <i>Mercantile law</i> claims do not have the amount sought entered from the statement of claim (SOC) onto JusticeLink. Not-listed <i>Mercantile law</i> claims usually have an accurate amount entered on to JusticeLink, but with some errors in transcription.
Entity type	Limited	Reasonable for distinguishing between individuals and organisations but would improve with a more comprehensive and appropriate definition of these two categories. Not feasible to identify insurers as defendants (or plaintiffs). Additional work is required to determine type of entity within these broad categories. Recording of ABN/ACN could be improved to facilitate this.
Defended claims	Further investigation required	Data on whether a defence was filed during the case may be an undercount as there is a poor match between this data and the participant data, with defence notices apparently filed by participants for which there is no information, and, potentially more problematic, defendants with legal representation who did not, on the data provided, appear to have filed a notice of defence. This is in part because defendants to appeals and cases started by summons are not required to file such a notice. Further work is required to identify an alternative method of capturing whether or not a case is defended.
Representation	Reasonable	Some evidence of under-recording of representation. Good that dates of representation are captured on JusticeLink. Further work required to determine if dates of representation can be better aligned with specific events, such as lodgement and filing of defence.
Attendance of the parties	Not recorded	No information on hearing attendance of the parties or representatives.
Events / case progress	Limited	Events are currently a combination of events and activities which are either party driven, administrative or judicial and may or may not reflect the active involvement of the parties. Further work is required to identify the best metrics for measuring case progress. Some claims had dates for events which preceded lodgement.
Outcomes	Moderate	Complicated to identify outcome from data as currently held – not least as procedural orders are held in the same data field as final orders. Not all cases have a plausible outcome in the data. Not all apparent first outcomes align with the first determined date. Further consideration should be given to whether it is feasible to separately record the main outcome of a case into a small set of outcome categories.
Time cases take	Reasonable	Dates are provided in the data, however, given the problems of identifying outcomes for some cases it is hard to assess the accuracy of these. It is also not currently possible to remove time on the inactive list. There appears to be a mix of automated rules for finalisation and Registry decisions. Consideration could be given to a routine approach to first finalising cases, as long as this doesn't create administrative issues for cases that need to be reopened.

Method

The Foundation analysed data held on JusticeLink for *all* District Court civil cases finalised for the first time in 2015. We also drew a sample of 1,000 cases for which the plaintiffs and defendants were coded into their respective entity types, and reviewed 325 electronic and paper casefiles.

Key questions

1. What types of civil claims are litigated in the District Court?

There were 6,327 claims recorded as first finalised in 2015 in the District Court including a small number of appeals from the Local Court and Children's Court.² Excluded from our analysis are: Certificates, Cross-claims, Notices of motion, Generic proceedings and Criminal proceedings.³

Our analysis of the accuracy of claim type data indicates that while they are generally correctly described in broad terms (that is, as *Torts* or *Mercantile law*), there are errors in the detail. In particular, a broad range of claims are given the general classification of *Mercantile law – other*, sometimes appropriately, sometimes not. When we reviewed a sample of these *Mercantile law – other* matters, this seemed particularly prevalent among e-filed claims. This has the effect of undercounting other *Mercantile law* categories and some non-*Mercantile* categories (such as those relating to income tax) and masking the prevalence of these specific claim types in the data.

Noting these limitations, the JusticeLink data indicated that:

- nearly two-thirds (64.0%) of all claims finalised for the first time in 2015 were *Torts*, most of which were *Personal injury* (33.0% of all claims) or *Personal injury – motor vehicle* (18.3% of all claims)
- nearly one-third (31.6%) were *Mercantile law* claims, three-quarters of which were classified as *Mercantile law – other* (23.1% of all claims).

JusticeLink data indicated that at least 77.1% (n=4,881) of all claims finalised for the first time in 2015 were case managed (described as 'listed' in our data). More than 4 out of every 5 listed claims (82.9%) were *Torts* claims and 12.1% were *Mercantile law* claims. The vast majority of claims that were recorded as not listed were *Mercantile law* (97.5%), with the remaining 2.5% being other (non-tort) matters. All *Torts* claims were listed.

2. What are District Court claims worth?

Claims to the District Court may be liquidated, unliquidated or not involve a monetary element to the claim. Amounts are more often recorded for *Mercantile law* and *Other* claims which generally tend to be liquidated, than for *Torts* claims, which tend to be unliquidated.

² Appeal cases in the District Court are allocated to a number of different lists. Of cases finalised for the first time in 2015, there were 32 in the Appeal (Cost Assessment) list, 14 in the Appeal (CTTT) list and 30 in the Appeal (Local Court) list. There were also 3 cases listed as 'Small Claims Division' and 52 appeals from the Children's Court.

³ Most analysis reported here is based on Claims proceedings only (within a claims case). A case may have multiple proceedings, if, for instance, there is a cross-claim.

Overall 68.4% of claims had no information on an amount sought or were recorded as zero. While this may indicate an unliquidated claim, our review of casefiles indicates that the amount sought as provided on the original claim is not always transferred into JusticeLink (even when it appeared to be a liquidated claim), so this is likely to be an overestimate of unliquidated claims. Indeed, 55% of the listed *Mercantile law* casefiles with what appeared to be a liquidated figure in the hardcopy file, had either no figure or a different figure on JusticeLink. The other 45% of files had the same figure on the casefile and on JusticeLink).⁴

Noting these limitations, in the 31.6% of claims that had an amount sought greater than zero recorded on JusticeLink, *Personal injuries – motor vehicles* had the highest average at \$850,000 followed by *Work injuries* at \$770,000. Lowest value were *Sale of goods and services* claims at an average of \$185,000.

3. Who is suing whom in the District Court?

Information collected on the types of entities who are parties in District Court claims is restricted to whether they are an 'individual' or an 'organisation' and whether they are 'corporate' or 'non-corporate' (the latter for fee purposes). Our analysis indicates that:

- 72.0% of plaintiffs were recorded as individuals (0.7% of which were 'corporate') and 28.0% as organisations (68.6% 'corporate')
- 53.0% of defendants were recorded as individuals (12.7% of which were 'corporate') and 47.0% as organisations (97.3% corporate).

To better understand the range of entity types involved in District Court civil claims we classified the plaintiffs and defendants in a random sample of 1,000 District Court claims into specific entity types. We found that:

- 61.7% of first plaintiffs were individuals and a further 8.1% were individuals by their tutors (people under the age of 18 or without capacity to instruct on their own behalf)
- 17.5% of first plaintiffs were businesses and 11.3% were government agencies (mainly the Australian Taxation Office)
- 47.1% of first defendants were individuals (and 0.1% individuals by their tutors) and 36.6% were businesses. Financial institutions were more common as plaintiffs and businesses from the construction, retail and leisure industries as defendants
- 12.2% of first defendants were government agencies (80.2% of which were NSW government agencies including health agencies).

Many District Court *Torts* claims may involve insurers, but because the UCPR rules do not require an insurer to sue in their own name, they sue in the name of the individual (and are included as 'individuals' in the data). It is likely, therefore, that in both the JusticeLink data and our classification of entity type, the 'individual' entity group in particular includes a large proportion of claims that involve insurers. Our review of the legal representatives of defendants in selected *Torts* claims suggested a large proportion acted for insurance companies.

⁴ Listed liquidated *Mercantile law* claims would not be representative of all liquidated *Mercantile law* claims, as most liquidated *Mercantile law* claims are not listed.

Our sample of 1,000 claims also enabled us to explore against whom different types of entities were taking action. The most common actions in the District Court involved:

- individual (with or without a tutor) against another individual (28.0%)
- individual (with or without a tutor) against a business (26.5%)
- individual against government (11.5%)
- government against individual (11.2%)
- business against business (9.2%)
- business against individual (7.8%).

4. What type of District Court claims are different entities involved in?

Looking at claims made by different plaintiffs in our sample:

- more than 80% of all claims brought by individuals were *Torts* claims, as were 97.5% of claims by individuals (by their tutor)
- business plaintiffs largely brought *Mercantile law* claims: *Mercantile law – other* (50.3%), *Sale of goods and services* (20.0%) and *Consumer/insurance/financial and goods disputes* (12.6%) and *Building disputes* (6.9%)
- nearly all claims brought by a government agency were classified as *Mercantile law – other*. However, 97.3% of these were actions by the Deputy Commissioner of Taxation to recover debt.

Looking at who are defendants to claims:

- the most common claims against individual defendants were *Mercantile law – other* (38.8%) (included misclassified income tax matters), *Personal injury – motor vehicle* (31.7%) and *Personal injury* claims (12.8%) (note these would include insurers behind the defendants)
- the most common claims against government agencies were *Personal injury* (45.5%), *Professional negligence* (19.8%) and *Wrongful acts against person/property/goods/land* (14.9%)
- more than half (50.7%) of claims against businesses defendants in our sample were *Personal injury* claims, and 18.2% were *Mercantile law – other* claims.

As noted in Section 3, an unknown proportion of claims may involve insurance companies.

5. What claims are defended in the District Court?

Noting that there may be more than one defendant to a claim, at least one defence was recorded as filed in 60.5% of all claims and 66.4% of those that were not in an Appeals list or commenced by a summons. However, there were examples of notices being filed by defendants, the details of whom were not included in the data provided on the parties to the claim.

The claims most likely to have a defence notice filed related to *Employment and workplace relations* (92.3%) and *Work injuries* (88.2% or 91.3% when restricting the analysis to cases

that were not appeals or summons). Those least likely to have a notice of defence filed were *Children, family and de facto relationships* (3.6%) – as most of these are appeals from the Children's Court.

The data indicated that just over a quarter of defence notices were recorded as filed within 2 months (27.4%) of the lodgement of the claim and nearly three-quarters within 6 months (73.9%).

On average, defence notices to *Torts* claims were filed later than those to *Mercantile law* or *Other* claim types, with over a quarter (28.6%) recorded as filed more than 6 months after the claim filing date. This no doubt reflects the nature of such matters and the legal administrative rules that apply.

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

While legal representation rates are generally high in District Court cases, there is some variation by type of claim. Nearly all plaintiffs in *Torts* claims were recorded as represented (96.8%) with the highest rate for *Work injury* claims (99.2%). Representation rates were also high for *Mercantile law* claims (92.9%), other than *Statutory obligation of debt recovery* (40.0%).

Defendants also have high levels of representation in *Torts* claims, with 88.6% recorded on JusticeLink as represented at some point during the case. Rates are far lower for *Mercantile law* claims (37.9%), particularly *Consumer/insurance/financial and goods disputes* (33.9%) and *Mercantile law – other* (34.3%). However, this is a reflection of some claims not being defended, as the rate of representation of defendants in *Mercantile law – listed* claims is considerably higher (71.6%).

By plaintiff type, there are similar rates of representation among business plaintiffs (92.6%), government plaintiffs (96.5%) and individual plaintiffs (96.1%) or individuals by their tutor (97.5%). However, 'other' plaintiff types, including not-for-profit organisations and clubs, were represented in only 78.6% of claims.

There is more variation in representation rates by type of defendant, ranging from only 54.2% of individual defendants to 94.2% of government defendants. Business defendants were represented in 80.0% of claims.

Representation also varied by the point in time in the case. As might be expected, more plaintiffs than defendants were recorded as represented within 7 days of a SOC being filed (83.6% of plaintiffs compared to 2.7% of defendants). However, of the 56.8% of defendants that filed a notice of defence, 92.7% were recorded as having representation at that time. Noting that some matters were not defended, 93.5% of plaintiffs and 68.6% of defendants were recorded as having a representative at the point the claim was finalised.

7. How do cases progress in the District Court?

There are various ways to describe the input of the court in a case and how a case progresses, including data on the types of events that occur and orders that are made.

In the JusticeLink data for claims finalised in 2015, there were 50 types of 'sitting' events. Overall, for the 6,327 claims there were 43,981 events of various types recorded. The most

common event type was *Return of subpoena*, followed by some type of *Directions* (45.1% and 40.8%). *Torts* claims involved the highest average number of *Return of subpoenas* (4.6). *Mercantile law – listed* claims had the highest average number of *Directions* (4.0) followed by *Torts* (3.5) and *Other* claim types (2.9).

Another way of monitoring the amount of activity in a case is to consider the orders made during the course of a claim. There was an average of 8.3 orders per claim proceeding, most commonly concerning adjournments (average 4.6 per claim), and various case management orders and directions (averaging 1.5 per claim). *Mercantile law – listed* claims had the highest average number of adjournments (6.4) and case management orders (2.1).

8. How are District Court claims finalised?

How a claim finalises is not directly recorded in the data, in part, because the finalisation of a claim is not always straightforward. Claims can have multiple elements that finalise partially or at different points, and any one element may finalise and reopen. Given the assumptions we have had to make to compile the data (described in the report) the following findings should be considered as indicative only:

- nearly three-quarters (73.2%) of *Torts* claims were finalised by consent judgment or by way of settlement/consent orders
- a further 14.4% were discontinued by the plaintiff(s) or dismissed by consent (and some of these may have involved some externally arranged settlement)
- about 2.5% were resolved in favour of the plaintiff(s) at trial (although this may be an underestimate if some of the generic orders were also in favour of the plaintiff) and
- 4.2% of claims were dismissed.

In comparison:

- 31.4% of *Mercantile law* claims finalised by way of default judgment
- 22.4% lapsed and
- 20.3% were discontinued or dismissed by consent.

A recorded settlement or consent arrangement was much less common for *Mercantile law* claims than *Torts* (6.5% of claims). *Mercantile law* claims that were not listed were far more likely than listed *Mercantile law* claims to result in default judgment (43.3% compared to 2.9%).

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

Not all claims involve or specify what the monetary amount sought is and if they do, this is not always transferred onto JusticeLink, or transferred correctly. The findings presented here are therefore indicative only.

Overall, 60.4% of claims resulted in an amount of monetary award being recorded on JusticeLink. Within *Torts*, a third of claims had an award of less than \$100,000 recorded and 3.4% had an award of more than \$750,000.

Making comparisons within claim type is limited by the absolute number of claims for which both an amount sought and an amount awarded are recorded on JusticeLink. In only 15.6% claims JusticeLink had figures greater than zero for *both* amount sought and amount

awarded. Overall, awards were slightly lower on average than the amount sought (\$302,000 vs. \$348,900), and this was most evidently the case for the 5.0% of *Torts* where there was information on both the amount sought and the award: the amount sought was an average of \$773,000 and the average award was \$475,000.⁵

Combining all claim types and grouping the amounts sought and awarded, broadly speaking, if an award is made and recorded on JusticeLink, it is in the same ballpark dollar range as the original claim.

10. How long do District Court claims take to finalise?

Some District Court cases are rather unusual in that they include periods of inactivity, where the parties and the court must wait for factors beyond their control (e.g. for a child to reach an age where their function can be assessed for damages). There are therefore two potential measures of claim duration: elapsed time from lodgement date to claim finalisation; and active time where the case is live and the court actively involved in its management. With the data we were provided, we could only look at the first of these.

Claims within the District Court vary considerably in their length. Some take many years to complete (11.6% took longer than 2 years and the longest claim we reviewed was 16.5 years). Although these long cases are the minority, 34.6% of *Torts*, 43.8% of *Mercantile law* and 53.2% of claims other than *Torts* and *Mercantile law* were completed within 9 months and only half of *Torts* claims had completed at the 1-year mark.

On average District Court claims take just over a year to finalise (400 days, or 13 months). *Torts* claims take longer on average (430 days or 14 months) than *Mercantile law* claims (340 days or 11 months), in part because the not listed *Mercantile law* claims take less than 10 months to finalise on average (300 days). Excluding the 265 claims with any inactive period brings the average length of all claims down from 400 to 360 days.

Next steps

In this report, we have addressed questions about claims finalised in the District Court. Where we could answer these using the JusticeLink dataset, we have done so. To answer other questions, we have gathered additional information on small samples of data. Civil court data across the jurisdictions is potentially a rich source of evidence to inform the development of justice sector policy and practice. However, further investment in analysis will not be worthwhile without first investing in improving data quality. This requires attention to how the data is defined, recorded, stored and retrieved.

⁵ The higher average for *Mercantile* cases may reflect an overestimate of the amounts awarded where award should not have been added together for some reason, such as the example we found of separate amounts for the award and the award + interest.

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 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) was engaged by the Department to investigate the quality and utility of each court and tribunal's data in informing policy and practice. This report focuses on the data from the District Court's civil jurisdiction.

The NSW District Court

The District Court is the intermediate court in the state's judicial hierarchy. In its civil jurisdiction the District Court deals with motor accident and work injury cases irrespective of the amount claimed, and other torts, mercantile (commercial) and other claims up to \$750,000.⁶ The District Court also hears appeals of Local Court and Children's Court care proceedings.

The District Court also has a residual jurisdiction which deals with a range of matters transferred from the NSW Compensation Court when it was abolished in 2002.⁷

Background

Data published in annual reports and reviews indicates that the District Court only deals with approximately 3% of all civil law matters finalised by courts and tribunals in NSW.⁸ 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 Court, and Land and Environment Court.

However, as noted in earlier reports in this series, the size, complexity and *definition* of matters in each jurisdiction vary.⁹ 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

⁶ Though it may deal with matters exceeding this amount if the parties consent. District Court of New South Wales *Annual Review*, 2015, p. 5.

⁷ These include: matters under the *Police Act 1990* concerning police officers hurt on duty and a range of matters concerning superannuation benefits to police officers; the *Workers' Compensation Act 1987* concerning workers in or about a coal mine; the *Workers Compensation (Dust Diseases) Act 1942*; the Sporting Injuries Insurance Scheme; and the *Workers' Compensation (Bush Fire, Emergency & Rescue Services) Act 1987* (see <http://www.districtcourt.justice.nsw.gov.au/Pages/aboutus/jurisdiction.aspx>)

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

⁹ Forell S & Mirrlees-Black C 2016, *Data insights in civil justice: NSW Civil and Administrative Tribunal Overview (NCAT Part 1)*, Law and Justice Foundation of NSW, Sydney, p.22, see also other *Data insights in civil justice* reports at <http://www.lawfoundation.net.au/ljf/app/5141D05E8AC0EF1D85258078004EC072.html>

matters. This variation may affect the relative proportion of matters reported in each jurisdiction.

The matters counted and reported also vary. For instance, the Annual Review for the District Court only reports matters which 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 not case managed matters).

If not listed District Court matters were also included in the table below, the proportion of civil court matters dealt with by the District Court matters would increase to 3.6%. If the equivalent of not listed Local Court matters were removed from the table below, the proportion of civil court matters dealt with by the Local Court would decrease considerably.

Table 2: Annual report finalisations for civil matters, 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 New South Wales *Provisional Statistics at January 2017*, pp. 4-6, including Common law – civil and Equity disposals; The Land and Environment Court of NSW *Annual Review 2015*, p. 31.

+ Common law civil and equity divisions.

This figure differs from the number of cases reported in this report due to differences in timeframe and potentially, in the way that finalised matters are selected for reporting.

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 *Legal Australia-Wide Survey: legal need in New South Wales*, a proportion of civil law issues will not be dealt with at all.¹⁰

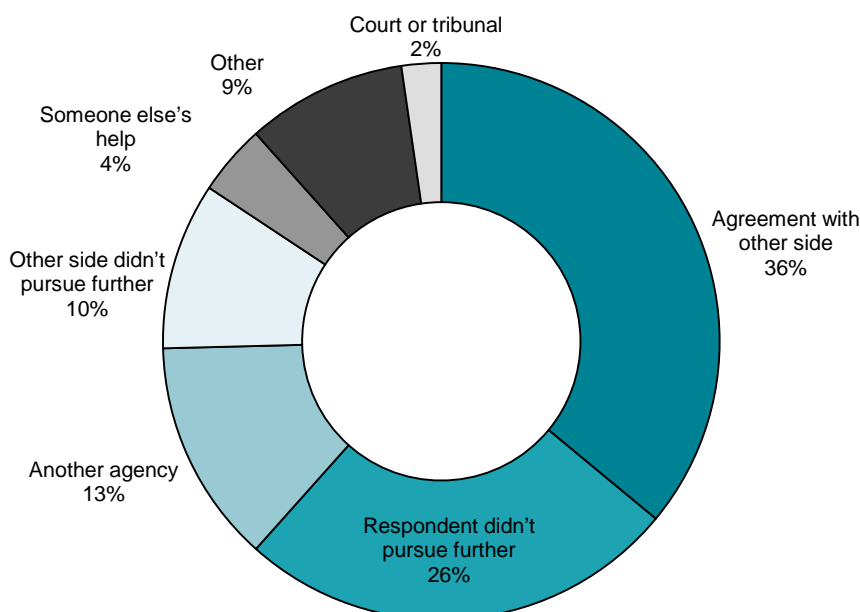
For instance, the LAW Survey asked a random sample of individuals about legal problems they had experienced in the previous 12 months and what they had done about those

¹⁰ 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.

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 respondents took any action in response to their legal problem, they were asked how they had 'finalised' their legal problems that were 'now over'.¹¹ Figure 1 indicates that in more than one-third (36%) of the *civil law* problems that had concluded were resolved through agreement with the other party. For a further 26% of concluded 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 1: How civil legal problems were finalised, LAW Survey (NSW)



Source: LAW Survey (NSW).

Notes: n=1,924 finalised civil problems. Data were 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 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 District Court civil jurisdiction data, as evidence for the purpose of policy making, and
2. suggest any changes to data definition, collection, entry, analysis and/or retrieval that would improve the quality and utility of the data for this purpose.

¹¹ Almost two-thirds of civil law problems (64%) were reported to be finalised at the time of interview.

Key questions addressed

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

1. What types of civil claims are litigated in the District Court?
2. What are District Court claims worth?
3. Who is suing whom in the District Court?
4. What type of District Court claims are different entities involved in?
5. What claims are defended in the District Court?
6. Who is represented in the District Court and for what claims?
7. How do cases progress in the District Court?
8. How are District Court claims finalised?
9. How do District Court amounts sought compare to awards made?
10. How long do District Court claims take to finalise?

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

An overview of the methodology

The Foundation drew data and information from the following sources:

1. data held on JusticeLink for *all* District Court civil claims finalised for the first time in 2015, including information on plaintiffs and defendants, representation status, claim types and amounts, court processes, outcomes and their amounts, and all relevant dates
2. a sample of 1,000 cases for which the plaintiffs and defendants were coded in to their respective entity types
3. 229 selected electronic and paper casefiles held by the District Court Registries, to verify the accuracy of JusticeLink data, and to collect details not available on JusticeLink such as the details of the case
4. a sample of 95 listed claims with the claim type *Mercantile law – other*
5. relevant documents, including legislation, court rules and regulations, JusticeLink user guides and instructions for e-filing
6. court and JusticeLink staff.

Details of the methodology are provided in Appendix 1: Methodology

Factors affecting data quality

The 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. Importantly, 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 a large number of different parties and their representatives through e-filing and bulk filing, registry staff, etc. with varying interest and skill in data accuracy)
- how data is stored and retrieved
- the sheer amount and complexity of the data held and how the data systems have been built, documented and maintained over time to accommodate this complexity
- how data is analysed, cleaned and reported
- variation between jurisdictions (or divisions or registries) in each or any of the above.

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

The data reported in this report

This report focuses on claims commenced in the District Court and recorded as finalised for the first time during 2015.

When reading the results, note that some tables and figures report the full JusticeLink dataset and others report samples of data from JusticeLink and casefiles. The source of data is provided in the notes to each table, and described in the text.

Filing a claim in the District Court

Claims may be filed in hardcopy at a District Court registry, or they may be e-filed through the NSW Online registry.¹² Overall, 82.3% of all claims first finalised in the District Court in 2015 were filed at a registry, 17.8% were filed online.¹³

This varied however by claim type:

- 44.9% of *Mercantile law* claims were filed online (55.1% filed at a registry)
- 4.8% of *Torts* claims were filed online (95.2% at a registry)
- 11.1% of *Other* claim types were filed online (88.9% at a registry).

See Table A1 in Appendix 2 for the proportion e-filed by each claim type.

Overall, 80.0% of all e-filed claims were *Mercantile law* claims.

¹² The online registry supports the NSW Supreme, Land and Environment, District and Local Courts.
<https://onlineregistry.lawlink.nsw.gov.au/content/>

¹³ We were advised by the District Court that this proportion is increasing.

The quality of data entered online

As NSW courts, including the District Court, move towards more online services,¹⁴, increasing amounts of information will be entered directly by parties 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 (such as claim type).

Specific comments about the quality of data entered online, compared to that entered at the registry are made where relevant in 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.

¹⁴ http://www.courts.justice.nsw.gov.au/Pages/cats/catscorporate_online_services/catscorporate_online_services.aspx

1. What types of civil claims are litigated in the District Court?

The business of each civil court or tribunal is defined in large part by the types of matters that it deals with. The number and types of matters lodged or finalised is often used as a base measure of activity. In this section, we focus on matters commenced in the District Court as claims. Within one case there may be multiple proceedings, of which one or more will be a claim proceeding. Claim proceedings include appeals from the Local Court and Children's Court, and so are included here.¹⁵ Excluded from our analysis are matters or proceedings relating to: Certificates, Cross-claims, Notices of motion, Generic proceedings and Criminal proceedings (see Table M1 in Appendix 1).

Reliable data on claim type is key to interpreting an analysis of: the parties involved; whether claims are defended; whether parties have legal representation; the progress of claims; the time they take to resolve; and the types of outcomes achieved.

Definition and quality of data on claim type

The type of claim recorded on JusticeLink reflects the category recorded on the statement of claim at the point of filing and any amendments to this by registry staff. When filing a claim plaintiffs are required to provide a Uniform Civil Procedure (UCPR) claim type.¹⁶ 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" (see Box 1).

Box 1: UCPR Guide instructions regarding claim type

Statements of claim and summonses must include information about the main type of claim that you are making. This information is collected for statistical purposes only and will not impact on how your proceedings will be dealt with by the court. The tables in this section list the descriptions of the type of claim that you should include in the 'type of claim' section of the statement of claim or summons.

Types of claim are generally based on the subject matter of the proceedings rather than the type of relief you are seeking. If there is more than one type of claim that might be applied to your proceedings, select the type of claim that is most applicable, or the type of claim that applies to the main part of your claim.

The notes beside the descriptions of the types of claim have been provided to assist you to select the most appropriate type of claim, and to assist you in determining whether the proceedings should be commenced in a particular division or list of a court.

If there is no type of claim listed that matches your claim, leave this field blank and it will be completed by the court.

¹⁵ Appeal cases in the District Court are allocated to a number of different lists. Of cases finalised for the first time in 2015 there were 32 in the Appeal (Cost Assessment) list, 14 in the Appeal (CTTT) list, and 30 in the Appeal (Local Court) list. There were also 3 cases listed as 'Small Claims Division' and 52 appeals from the Children's Court.

¹⁶ *Uniform Civil Procedure Rules (UCPR) (undated) Guide to completing the approved forms, Section 6*
<http://www.ucprforms.justice.nsw.gov.au/Documents/ucpr%20guide%20section%206.pdf>.

While there are 57 UCPR claim types specified for the District Court we found 79 different claim types recorded on JusticeLink for claims first finalised in 2015. Some of these were Local Court or Supreme Court claim types. These include matters that had been transferred to the District Court, keeping (as is appropriate) their original claim type. Others were not UCPR categories at all. Having reviewed each type, we reduced the 79 into 18 claim types. Of the 6,327 claims, 4,047 (64.0%) were *Torts* claims, 2,000 (31.6%) were *Mercantile law* claims and 280 (4.4%) were *Other* claim types (Table 3). Nearly three-quarters (73.2%) of all *Mercantile law* claims were recorded as *Mercantile law – other*.

Table 3: Profile of District Court claim types recorded as first finalised in 2015

	All	Per cent of claim group	Per cent of all claims
	N	%	%
Torts	4,047		
Personal injuries – other	2,087	51.6	33.0
Personal injuries motor vehicle	1,157	28.6	18.3
Professional negligence	353	8.7	5.6
Deceit/defamation/other wrongful acts	206	5.1	3.3
Wrongful acts against person/property/goods/land	125	3.1	2.0
Work injuries	119	2.9	1.9
Mercantile law	2,000		
Mercantile law – other	1,463	73.2	23.1
Sale of goods and services	248	12.4	3.9
Consumer/insurance/financial and goods disputes	182	9.1	2.9
Building disputes	86	4.3	1.4
Partnership/Principal & Agent disputes	11	0.6	0.2
Statutory obligation of debt recovery	10	0.2	0.2
Other claim types	280		
Applications under specific acts/laws	81	28.9	1.3
Workers compensation	65	23.2	1.0
Children, family and de facto relationships	56	20.0	0.9
Real property	53	18.9	0.8
Employment and workplace relations	13	4.6	0.2
Other types of claim (including equity)	12	4.3	0.2
Total	6,327		

Source: District Court JusticeLink data on claims recorded as finalised for the first time in 2015.

Note: This analysis uses the claim type categories recorded on JusticeLink which are not always accurate (see Section 1).

Review of claim types

To better understand what types of claims were sitting within the *Mercantile law – other* category, we examined 95 casefiles (hardcopy and e-filed) classified as *Mercantile law – other* on JusticeLink.¹⁷ We reviewed which claim type category was specified on the original SOC and the particulars or details of the claim.

Original SOC category of JusticeLink *Mercantile law – other* claims

In 42.1% of the 95 casefiles examined, the claim type recorded on the casefile SOC by the plaintiff was not taken from the UCPR list of claim types for the District Court (Table 4). These included 'user-defined' claim types such as:

- *Contract – liquidated debt*
- *Breach of contract*
- *Contractual dispute*
- *Money (or Money claim)*
- *Torts – indemnity – recovery*

It may be that those drafting SOCs are either:

- not referring to the UCPR claim types provided, and are rather using descriptions which are more meaningful to them, or
- attempting to use the UCPR claim types, but not finding categories in this list that (appropriately) describe their claims.

As all these claims were categorised on JusticeLink as *Mercantile law – other*, this indicates that there is a degree of review of hardcopy (registry) filings and, where necessary, amendment of the claim type category by registry staff.

Most e-filed claims in our sample had *Mercantile law – other* as the claim type on the SOC, or a claim type relevant to a Local Court matter. This indicates that the drop down list of claim types provided when e-filing forces the selection of a formal UCPR category, however, as discussed below, not necessarily the correct one.

¹⁷ These were all listed claims.

Table 4: Claim type on original SOC, sample of claims with JusticeLink claim type *Mercantile law – other*

Claim type recorded on the paper SOC	Casefiles examined	
	N	%
No claim type	10	10.5
A user-defined claim type	40	42.1
A UCPR claim type (not necessarily correct)	43	45.3
Mercantile law – insurance disputes	1	1.1
Mercantile law – sale of goods and services	2	2.1
Mercantile law – other	35	36.8
Multiple claim types (UCPR and user-defined)	2	2.1
Total claims	95	100.0

Source: Casefile analysis of listed *Mercantile law – other* sample (n=95).

In 10 *Mercantile law – other* cases (10.5%) examined, there was no claim type at all on the paper SOC (including the 3 earliest claims in our sample, which commenced before 2011) as this information wasn't collected on older forms.

In 43 cases examined (45.3% of our sample) the claim type on the paper SOC had been drawn from the UCPR list of claim types provided. Among these were 35 cases defined on the SOC as *Mercantile law – other*. Importantly, while these 43 cases had a legitimate claim type from the UCPR list, they did not necessarily have a claim type that reflected the particulars of the case (whether e-filed or filed at the registry).

Our categorisation of *Mercantile law – other* claims

We reviewed the particulars of each of the 95 casefiles and assigned them to what we assessed to be the most appropriate claim type (excluding 12 that we did not feel confident enough to classify) (Table 5). Note, however, this is our judgement and another reviewer may have classified these claims differently. It is apparent that a range of claims are being inappropriately categorised as *Mercantile law – other*. The over-use of this broad category skews the overall profile of claims in the District Court, *undercounting* other categories of claims, as these are 'hidden' within the *Mercantile law – other* category.

Table 5: LJF classification of listed claims defined as ‘Mercantile law – other’ on JusticeLink

Claim type as identified by the LJF	Number of casefiles
Mercantile law	60
Building dispute	2
Consumer credit	1
Consumer protection and trade practices	2
Insurance disputes	6
Partnership disputes	2
Sale of goods and services	10
Statutory obligation of debt recovery – Income Tax Assessment Act	6
Other	12
Relating to loan or mortgage (not credit card/advance) (no category)	14
Relating to lease/hire of goods (no category)	5
Torts	10
Negligence – industrial accident	2
Negligence-- other	3
Professional negligence – financial services industry	1
Professional negligence – Other	3
Trespass – trespass to person	1
Other claim types	13
Real property – leasehold title – rent due	3
Real property – other	3
Employment & workplace relations – employment relationship/contracts	7
Classification uncertain^	12
Total casefiles examined	95

Source: casefile analysis, listed *Mercantile law – other* sample (n=95).

^ Including 3 possible *Mercantile law – Consumer protection and trade practices*, 3 possible *Employment & workplace relations – Employment Relationships/Contracts or termination of employment*, 3 possible *Mercantile law – other*, 2 possible *Mercantile law – sale of goods and services*, 1 possible *Real property – freehold title*.

Of particular note, while the e-filed claims in our sample had a formal UCPR category, in most cases, this was *not* found to be the most appropriate claim type for the matter described in the casefile. This suggests that further guidance needs to be provided to those e-filing, to ensure that the most appropriate claim type is selected from the drop down list.

We also identified groups of claims in the *Mercantile law – other* category that did not appear to fit into any of the other eight *Mercantile law* categories, but, from a policy point of view, may be useful to identify in data. These included:

- disputes over the lease/hire of goods (5 claims)
- disputes over loans or mortgages: (14 claims). Some of these loans were between individuals and some between individuals and businesses – not necessarily banks. These were not claims that involved credit cards or advances.

Of further potential policy interest were that 10 of the 95 listed *Mercantile law – other* claims (10.5%) within this sample involved guarantors (see Case study 1).

CASE STUDY 1: JusticeLink claim type: Mercantile law – other

In this case, the plaintiff entered into five loan agreements with the first defendant for the lease of goods. The second defendant was the guarantor for three out of the five loan agreements. The first defendant failed to make repayments under the loan. The plaintiff issued letters of demand for the repayment or repossession of the goods with no outcome. The plaintiff was seeking recovery of the unpaid loan amount and/or the return of the goods under mortgage security.

The matter was lodged in December 2011 via a statement of claim. No defence was filed by the first defendant and there was no evidence of representation for the first defendant. There were two default judgments in this case made on the same date in May 2012. The first default judgment was made against both the first and the second defendants, this was then set aside. The second and final default judgment was made against the second defendant. The matter remained active on JusticeLink until the end of the financial year in 2015 where it changed to determined.

Quality of other claim categories

A review of casefiles from other UCPR claim categories indicated that there was also incorrect categorisation for other claim types. For instance:

- among claims classified as *Torts – negligence – other* on JusticeLink were claims that would be more appropriately classified as: *Torts – negligence – personal injury*; *Torts – negligence – legal profession*; *Torts – trespass – assault / Torts – trespass – trespass to person*; and *Mercantile law*
- among claims classified as *Torts – negligence – personal injury* on JusticeLink were claims that would be more appropriately classified as *Torts – negligence – motor vehicle accident*; *Torts – negligence – industrial accident*; and *Torts – negligence – public liability*
- among claims classified as *Torts – negligence – public liability* on JusticeLink were claims that would be more appropriately classified as *Torts – negligence – personal injury* and *Torts – negligence – motor vehicle accident*.

Listed and not listed District Court claims

Claims in the District Court are divided into two broad groups: case managed and not case managed. Claims that are initially allocated to be case managed are assigned to a list. In the data provided, there was no field to distinguish between case managed and not case managed so in our analysis we have distinguished between claims that were assigned to a list and those that were not. Listed claims generally include unliquidated claims and

defended liquidated claims. Undeferred liquidated claims tend not to be listed. While our analysis indicates there is court activity around some claims identified in JusticeLink as not listed (presumably because they subsequently moved into a list), most do not utilise judicial officer time. As the court itself distinguishes in its annual reports between these types of case, we have retained the distinction here.

There were 6,327 claims recorded as first finalised in 2015 in the District Court (4,881 listed and 1,446 not listed). Nearly two-thirds (64.0%) of all claims (listed and not listed) first finalised in the District Court in 2015 were *Torts* claims, with most of these being *Personal injury* claims (motor vehicle and other). Nearly one-third (31.6%) of claims were *Mercantile law* claims (Table A2, Appendix 2). The remaining claims included small numbers of *Workers compensation*, *Employment and workplace relations*, *Children, family and de facto relationships* and claims under other acts/laws.

Table 6: Proportion of claim types finalised in the District Court, 2015 that were listed and not listed

	Total claims	Not listed	Listed
	N	%	%
Torts (all)	4,047	0.0	100.0
Mercantile law	2,000	70.5	29.5
Other	1,463	73.7	26.3
Sale of goods and services	248	68.5	31.5
Consumer/insurance/financial and goods disputes	182	71.4	28.6
Building disputes	86	24.4	75.6
Partnership/Principal & Agent disputes	11	36.4	63.6
Statutory obligation of debt recovery	10	70.0	30.0
Other claim types	280	12.9	87.1
Applications under specific acts/laws	81	7.4	92.6
Workers compensation	65	4.6	95.4
Children, family and de facto relationships	56	0.0	100.0
Real property	53	47.2	52.8
Employment and workplace relations	13	15.4	84.6
Other types of claim (including equity)	12	0.0	100.0
Total	6,327	22.9	77.1

Source: District Court JusticeLink claims recorded as first finalised in 2015.

Note: This analysis uses the claim type categories recorded on JusticeLink which is not always accurate (see Section 1).

Overall, 77.1% of claims first finalised in 2015 were recorded on JusticeLink as listed (case managed). However, this varied considerably by claim type. As indicated on Table 6, all *Torts* and *Children, family and de facto relationships* claims filed in 2015 were case managed, as were the vast majority of *Workers compensation* (95.4%) and *Applications under specific acts/laws* (92.6%) claims.

By way of contrast, only 30% of *Mercantile law* claims were listed. However, within the broad *Mercantile law* category, higher proportions of *Building disputes* (75.6%) and *Partnership/ Principal & Agent disputes* (63.6%) were listed, compared to *Consumer/insurance/financial and goods disputes* (28.6%), *Sale of goods and services* (31.5%) and *Mercantile law – other* (26.3%) claims.

Improving information about types of claim

Our analysis indicates that the utility of claim type data for statistical purposes is currently compromised in a number of ways:

- the UCPR claim types are not always used by those filing hardcopy SOC's at the registry, but UCPR claim types are applied when claims are e-filed (as they are selected from a menu)
- while claim type may be added or amended by the registry to fit a UCPR category, the correct category may not necessarily be selected
- incorrect UCPR claim types are applied to claims (on the hardcopy SOC's and on JusticeLink), and in particular, in those claims which are e-filed.

Several factors appear to contribute to this. First, where claims are complex, several UCPR categories may apply, but only one can be captured. The UCPR Guide indicates that where two claims may apply, the 'most applicable' claim type or that relating to the 'main part of your claim' should be selected (see Box 1). Not recording additional claim types may result in certain claim types being undercounted. For example, if a matter has elements of *Mercantile law – building disputes* and *Torts – Negligence – other*, one of these will be captured by the data and the other not.

Second, the UCPR categories themselves are complex and are not necessarily mutually exclusive, with some claims fitting logically into more than one category, e.g., *Mercantile law – Statutory obligation of debt recovery – Income Tax Assessment Act* and *Applications under specific Commonwealth Acts – Income Tax Assessment Act 1936*.

Further, it is not clear what the key or defining element of each category is, particularly within each of the broad group of *Torts* and the broad group of *Mercantile law* claims. In *Torts*, for example, the defining characteristic may be a type of civil wrong (e.g. defamation, trespass), the type of injury (e.g. nervous shock), the context of the wrong (e.g. workplace injury, motor vehicle injury) or the defendant type (e.g., if against a government or public authority – it becomes 'public liability').

Finally, some UCPR categories are ambiguous and, in some cases, made more ambiguous by the description provided. For instance *Torts – negligence – public liability* may be popularly understood to include claims where a person is injured in a community space, including, for instance, a shopping centre. However, the description of the category in the UCPR Guide limits these claims to claims 'against a government or other public authority for personal injury caused by the negligence of that authority...'.

We reviewed claim type classifications for civil claims in other Australian jurisdictions and found little consistency between jurisdictions. Some jurisdictions use broad and simple categories such as building dispute, contract, debt (recovery), personal injury, motor

vehicle property and other.¹⁸ The Victorian County Court, like NSW, has long lists of detailed matter types.¹⁹

The design of the new e-registry should improve the quality of claim type information, as it uses a 'decision tree' to help users identify the correct claim type for their matter. Bearing in mind that the same e-registry is used for all civil courts in NSW (Local, District, Supreme and Land and Environment Courts), users are first directed to identify the 'relief claimed'. Categories offered are:

- Money – liquidated
- Motor vehicle damages – liquidated
- Possession of land
- Possession of land and money
- Detention of goods
- Personal injury, damages
- Other.²⁰

This, together with information on the value of the claim, helps users to identify the correct court and, depending upon the type of claim, the correct claim type.

Further options to improve the reliability and utility of claim type data for statistical purposes include to:

- revise and simplify the UCPR claim type categories *and* the guidance provided to users in the UCPR Guide about which categories to use. Any change should focus on categorising claim types in a way that both makes intuitive sense to users and provides useful information to decision makers
- further refine the online filing system to help parties more accurately identify claim types. This may involve replacing the UCPR categories provided to plaintiffs with plain language claim type categories and guidance, which can then, at the back end, be matched to the formal UCPR categories.

¹⁸ Statement of claim form for the Tasmanian Magistrates Court.

http://www.magistratescourt.tas.gov.au/__data/assets/word_doc/0003/339096/Form01-Claim.docx. See also ACT http://www.courts.act.gov.au/magistrates/courts2/magistrates_court_-_civil_jurisdiction/commencing-a-civil-action

¹⁹http://www.countycourt.vic.gov.au/sites/default/files/forms/CIF_Request%20to%20Enter%20a%20List%20DIVISIONS%20-%20amended%202%20Oct%202015.doc

²⁰ <https://onlineregistry.lawlink.nsw.gov.au/content/new-case>

2. What are District Court claims worth?

Claims to the District Court may be liquidated or unliquidated, or not involve a monetary element. Liquidated claims are those where the amount claimed is known and specified – such as in the case of a debt to be recovered. Unliquidated claims are for an unknown amount that will be decided or agreed during the course of the case. This is particularly apparent in claims relating to injuries occurring to a child, where the full impact of the damage is unknown at the time the claim is made. Cases with no monetary element include appeals from the Children’s Court and some from the Local Court.

The monetary jurisdiction of the NSW District Court varies according to the nature of the proceedings. For most *Torts* and *Mercantile law* claims, the upper limit is \$750,000 (*District Court Act 1973*) although it can be higher in claims under the *Civil Liability Act 2002* or extended to \$1,125,000 in certain matters where the defendant does not object. It is unlimited for motor vehicle accident and workplace injury claims. Generally, matters must be worth over \$100,000 to fall into the District Court jurisdiction rather than the Local Court.

Definition and quality of monetary amount data

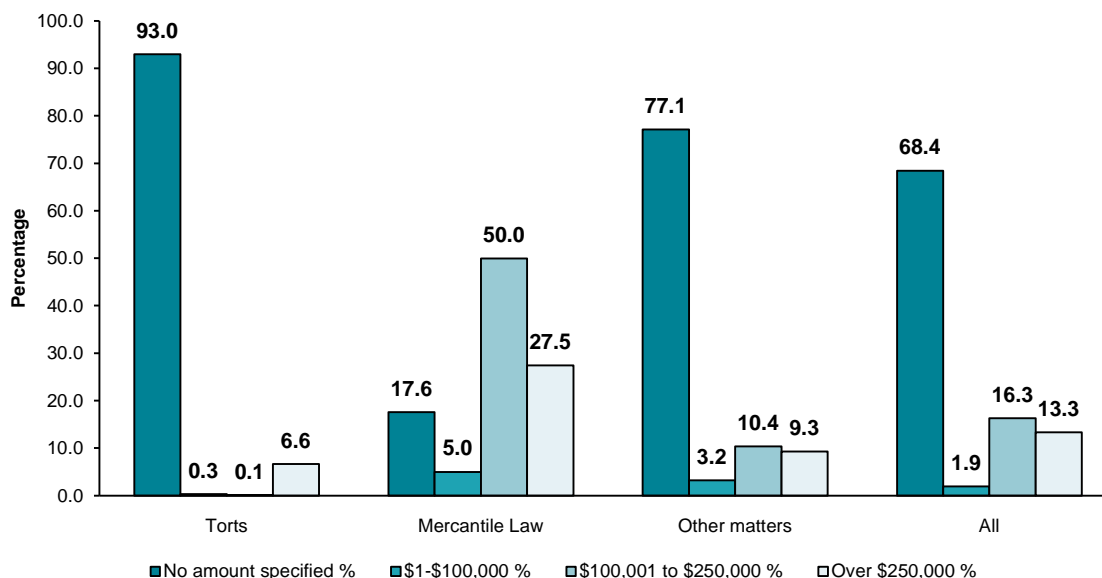
The data that we were provided with included a total amount sought in dollar terms on JusticeLink and was not split between defendants. While the recording of a monetary amount sought may be expected for liquidated claims and not expected for unliquidated claims, the status of claims as one or the other is not clear in the data.

Overall, 68.4% of claims had no information on an amount sought or were recorded as zero. While this may indicate an unliquidated claim, our review of casefiles indicates that the amount sought as provided on the original claim is not always transferred into JusticeLink (even when it appeared to be a liquidated claim), so this is likely to be an overestimate of unliquidated claims. Indeed, 55% of the listed *Mercantile law* casefiles with what appeared to be a liquidated figure in the hardcopy file, had either no figure or a different figure on JusticeLink. The other 45% of files had the same figure on the casefile and on JusticeLink).²¹

Mercantile law claims that were not listed (which tend to be liquidated claims) usually had a specified claim amount recorded (95.2%). Most *Torts* claims had no amount recorded, but this reflected the large proportion that were unliquidated (as confirmed by our casefile analysis): 83.5% of claims did not specify an amount, and a further 9.5% had no monetary claim recorded (Figure 2).

²¹ Listed liquidated *Mercantile law* claims would not be representative of all liquidated *Mercantile law* claims, as most liquidated *Mercantile law* claims are not listed.

Figure 2: Amount sought recorded on JusticeLink in District Court claims first finalised in 2015



For this small casefile sample of listed *Mercantile law* claims, we also compared the recording of liquidated claims which were e-filed compared to those filed at the registry. The amounts recorded on JusticeLink and in the hardcopy file were the same in 10 of the 15 (two-thirds) e-filed liquidated claims, but only 18 of the 43 matters of the liquidated claims filed at the registry.

Value of District Court claims

Bearing in mind these limitations of the data on amounts sought, less than 2% (1.9%) of claims specified an amount under the Local Court jurisdiction of \$100,000.²² Only 0.3% specified an amount over \$750,000 (Table A3 in Appendix 2).

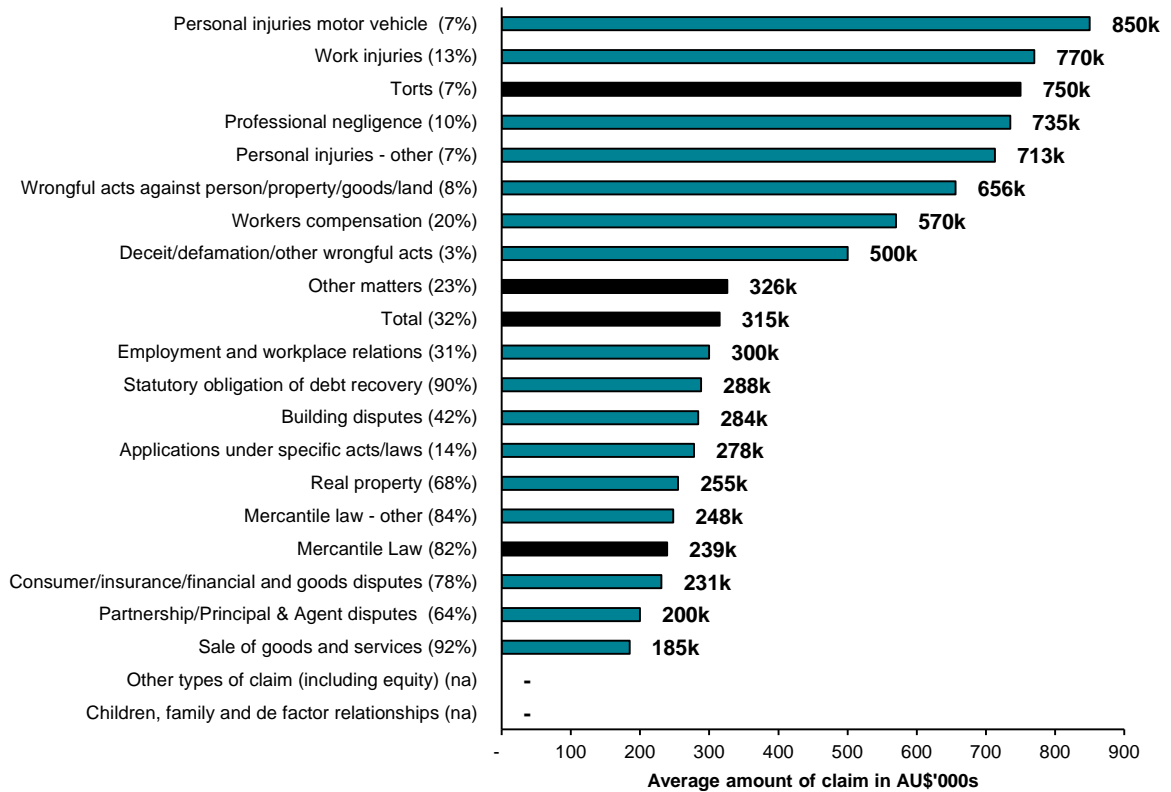
Overall, nearly a third of claims (31.6%) had an amount greater than zero sought recorded on JusticeLink. Figure 3 indicates in brackets next to the claim type the percentage of claims for which an amount was specified, and the bar shows the average of those amounts rounded to the nearest thousand.

Personal injuries – motor vehicles had the highest average at \$850,000 followed by *Work injuries* at \$770,000. Lowest value claims were *Sale of goods and services* claims, with the 91.5% for which an amount was specified averaging \$185,000.

Within *Mercantile law* claims where an amount was specified, there was very little difference in the average amount between claims that were initially listed (\$247,000) and those that were not (\$237,000). However, claims that were not listed usually had a specified claim amount recorded on JusticeLink (95.2%, compared to 51.9% of listed *Mercantile law* claims) – as would be expected given that they should be liquidated claims.

²² These were mainly not listed claims or were in the General Division or the General List.

Figure 3: Average amount sought for District Court claims where an amount was specified



Improving information about the amounts sought

The data on amounts sought would be improved by clearly differentiating between claims that are unliquidated and those that are liquidated (as appears to be the approach taken with the new e-filing systems). The amount for liquidated claims should be required to be transcribed onto JusticeLink.

3. Who is suing whom in the District Court?

Information about who is taking action against whom in each civil jurisdiction in NSW is essential to the design of a client-centred justice system. 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 which types of dispute? 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 appears 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 (some parties provide a lawyer's address or no address)
- 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.

Individual or organisation?

JusticeLink contains two data fields which primarily relate to the calculation of fees: the entity status (individual or organisation) and a field of 'corporate/non-corporate'. When filing in the District Court, plaintiffs are classified as 'individual' or 'organisation'. If plaintiffs file on paper, parties are classified by court staff entering data onto JusticeLink.²³

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 'individual' and which should be 'organisation'; and b) the purpose for collecting this information.²⁴

Parties are then identified as 'corporate' or 'non-corporate', in order to calculate 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.

²³ The Uniform Civil Procedure Rules (UCPR) forms do not request this information from the plaintiff.

²⁴ <https://onlineregistry.lawlink.nsw.gov.au/content/>. However, there is advice in a YouTube instructional video that 'If the defendant is an organisation or business, select 'Organisation' here; you will then need to enter either their Australian Business Number (ABN) or Australian Company Number (ACN)'.

Corporate or non-corporate?

Civil procedure regulations stipulate two fee rates: a standard (non-corporate) rate and a corporation (corporate) rate. Generally speaking, individuals pay a non-corporate rate and organisations pay a corporate rate. However, as illustrated in Table 7 below, the picture is not as simple as this. Notable exceptions are:

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

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.

Table 7: Examples of entities categorised as ‘corporate and non-corporate’ according to the Court Services Procedure Guide (2015), broken down by the categories of ‘Individual’ or ‘Organisation’ used in the present analysis

	Corporate rate [^]	Non-corporate (standard) rate
Individual	A corporation pursuing claim in name of natural person (e.g. insurer). ²⁵	Private citizen in own capacity People who are liable for the actions of other people or entities <i>[Sole or small business owner?]</i> <i>[Partners in partnerships?]</i>
Organisation	Corporations with ‘Inc’, ‘Ltd’ or ‘Pty Ltd’, and more than \$200,000 turnover Incorporated legal practices Medical funds Registered clubs The Board or Trustees of a private school The owners – strata plan xxxx Local Councils (after 1/7/15)	Corporations with less than \$200,000 turnover, including those with ‘Inc’, ‘Ltd’ or ‘Pty Ltd’ Legal practitioners who act for an individual Liquidators Religious and charitable organisations State of NSW State Government Departments Local Councils (before 1/7/15) NSW Ministerial Corporation State Rail Authority Coal Mines Board Federal Government Dept. or Agency Interstate Government Bodies <i>[Sole or small business owner?]</i> <i>[Partners in partnerships?]</i>

Notes: [^] Corporations defined by s. 57A of *Corporations Act, 2001*.

Corporate and non-corporate, as defined by the Court Services Procedure Guide (2015): Fees (Local and District Courts), p.15.

²⁵ 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)’.

Plaintiff and defendants in District Court civil claims: JusticeLink categories

Multiple plaintiffs and defendants

Most claims brought in the District Court are brought by one named plaintiff (bearing in mind that not all interested parties, such as insurers, are named) – 98.1% of *Torts* and 92.4% of *Mercantile law* claims were brought by one plaintiff. Claims regarding *Other claim types* more often had multiple plaintiffs (13.6%).

Multiple defendants were more common: overall 24.6% of claims had more than one named defendant (Table 8). These tended to be *Personal injury*, *Mercantile law – other* and *Children/family and de facto relationships* related claims (Table A4, Appendix 2).

Table 8: Number of plaintiffs and defendants in District Court claims, by broad claim type

		One	Two	Three	Four or more
	N	%	%	%	%
Torts					
Plaintiff	4,046	98.1	1.4	0.3	0.2
Defendant	4,037	78.4	15.7	3.9	2.0
Mercantile law					
Plaintiff	1,999	92.4	6.2	0.9	0.5
Defendant	1,984	71.0	20.7	5.9	2.5
Other claim types					
Plaintiff	280	86.4	10.4	2.9	0.4
Defendant	275	62.5	17.5	8.7	11.3
All					
Plaintiff	6,325	95.8	3.3	0.6	0.3
Defendant	6,296	75.4	17.3	4.7	2.5

Source: District Court JusticeLink data on all plaintiffs and defendants in claims recorded as finalised for the first time in 2015

JusticeLink plaintiff and defendant types

As noted above, 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'. An analysis of this indicates that:

- 72.0% of plaintiffs were recorded as individuals, most of which were identified as 'non-corporate'
- 28.0% of plaintiffs were recorded as organisations, over two-thirds of which were identified as 'corporate'

- 46.3% of defendants were identified as individuals and non-corporate, and 45.7% as organisations and corporate (Table 9).

Table 9: JusticeLink plaintiff and defendant types in claims finalised in the NSW District Court, 2015

	Plaintiffs		Defendants	
	N=6,721		N=8,673	
	% of all plaintiffs		% of all defendants	
'Individual'	72.0	% of 'individual'	53.0	% of 'individual'
Corporate	0.5	0.7	6.8	12.7
Non-corporate	71.4	99.3	46.3	87.3
'Organisation'	28.0	% of 'organisation'	47.0	% of 'organisation'
Corporate	19.2	68.6	45.7	97.3
Non-corporate	8.8	31.4	1.3	2.7
Total	100.0		100.0	

Source: District Court JusticeLink database, all plaintiffs and defendants in claims recorded as finalised for the first time in 2015.

Box 2: Insurer involvement in District Court claims

Of interest, 6.8% of defendants (and 0.5% of plaintiffs) were identified as 'individual' and 'corporate'. When this figure is examined by claim type we note that in 10.4% of *Torts* claims, the defendant is 'individual' and 'corporate', compared to only 0.8% of defendants in *Mercantile law* claims (see Table A5, in Appendix 2).

It is possible that *Personal injury* (including motor vehicle) claims, in which the defendant (and less commonly, the plaintiff) is identified as individual/corporate are filed by insurance companies under the claimant's name (right of subrogation). While insurers are not required to sue in their own name, we are advised by the Court that they are key players in District Court claims. Therefore it seems important to have some mechanism by which their involvement could be accurately measured.

However, while the 'individual/corporate' indicator provides one clue to the involvement of insurers in District Court claims, it may undercount the number of claims in which an insurer is involved. This is because that figure does not include insurers for organisational plaintiffs and defendants. Further, we cannot verify whether or not insurers identify themselves (as they should) when claims are filed (and defence documents lodged) with the court.²⁶

In the absence of any other information on JusticeLink which could point to insurer involvement, we reviewed a sample of 1,000 claims by the plaintiff and defendant representatives' firms. Focusing on defendant representatives, we identified those firms that usually act for insurers. We noted that in approximately 90% of *Torts* claims for *Personal injury*, *Personal injury – motor vehicles*, *Professional negligence* and *Work injuries* in which the defendant was represented, the solicitor involved was from a firm which acts for insurers. While this does not necessarily mean that an insurer was behind the defendant in every matter, it does point to the potential scale of insurer involvement in this jurisdiction.

²⁶ When e-filing, individual plaintiffs are asked 'Is this action being commenced in the name of an individual (e.g. insurance companies)? They have to check a box to indicate yes or no.

Types of entities involved in District Court claims

To better understand the range of entity types involved in District Court civil claims – and to illustrate the value of more granulated data categories – we took a random sample of 1,000 District Court claims and classified the first plaintiffs and defendants into specific entity types.

Table 10 indicates that:

- 61.7% of first **plaintiffs** were individuals, while a further 8.1% were individuals by their tutors (people under the age of 18 or without capacity to instruct on their own behalf)
- 17.5% of first plaintiffs were businesses and 11.3% were government agencies
- 47.1% of first **defendants** were individuals and 0.1%, individuals by their tutors
- 36.6% of first defendants were businesses and 12.2% were government agencies.

Table 10: Types of plaintiffs and defendants identified in 1,000 claims finalised in the District Court, 2015

LJF entity type (broad category)	Plaintiff	Defendant
	N=1,000	N=991
	%	%
'Individual' (incl. insurers)	61.7	47.1
'Individual by tutor' (incl. insurers)	8.1	0.1
Business	17.5	36.6
Government (Local, State & Commonwealth)	11.3	12.2
Other	1.4	2.5
Nominal Defendant	0.0	1.4
Total	100.0	100.0

Source: District Court JusticeLink data on claims recorded as finalised for the first time in 2015.

Notes: Based on a sample of 1,000 random cases. First plaintiff and first defendant selected per case. 'Other' largely consists of not-for-profits, NGOs, sporting groups, interest groups, strata and representatives of other individuals.

Table 11 provides a more granulated picture of the types of plaintiffs and defendants in the District Court. It indicates, for instance, that most of the government plaintiffs (11.1% of all plaintiffs) were Commonwealth agencies (and within that, the Australian Taxation Office) while most government defendants were NSW government agencies (9.8% of all defendants). Table 11 also indicates the range of businesses involved as parties in District Court claims finalised in 2015.

Table 11: Detailed types of plaintiffs and defendants in 1,000 claims finalised in the District Court, 2015

Entity type	Plaintiffs	Defendants
	N=1,000	N=991
	%	%
'Individual' (incl. insurers)	61.7	47.1
'Individual by tutor' (incl. insurers)	8.1	0.1
Local council	0.0	2.0
NSW government/agency [#]	0.2	9.8
Commonwealth government [^]	11.1	0.4
Insurance (incl. workers compensation)	1.5	1.5
Financial institutions	4.6	2.3
Utilities	0.0	0.6
Construction, builders, plumbers, electricians, engineering, mining, etc.	2.8	6.5
Retail and wholesale	0.6	5.8
Leisure industry (incl. hotels, restaurants)	0.5	4.8
Manufacturing related	1.5	1.9
Transport related	1.0	2.0
Property related (incl. management, agents, gardening)	0.6	1.9
Professionals (incl. legal, accounting, etc.)	0.7	1.5
Health related (incl. private health services, insurance, aged care) excluding state health services	0.4	1.1
Agricultural related	0.2	0.9
Other business	1.9	3.2
Services (incl. training)	1.2	2.5
Not-for-profits, NGOs, sporting groups, interest groups	0.0	1.4
Strata owners & managers and owners / body corporations	0.1	0.4
Representatives of other individuals (incl. legal tutor, guardian, executor or trustee)	1.3	0.7
Nominal Defendant	0.0	1.4
All	100.0	100.0

Source: District Court JusticeLink data on claims recorded as finalised for the first time in 2015.

Notes: Based on claims from 1,000 random cases. First plaintiff and first defendant selected per case. 'Other' largely consists of not-for-profits, NGOs, sporting groups, interest groups, strata and representatives of other individuals.

[#] Health related NSW government departments/agencies make up 39.4% of cases involving the NSW government.

[^] The Australian Taxation Office makes up 96.5% of cases involving the Commonwealth government.

Foundation categories compared to JusticeLink categories

The Foundation entity type analysis also enabled us to review how accurately the JusticeLink categories of 'individual' and 'organisation' are being applied, by comparing them to the Foundation entity sample.

Generally speaking, those plaintiffs which were identified as 'individual' on JusticeLink, were also identified as individuals in our sample. Only 2.4% of *plaintiffs* who were identified as being an 'individual' on JusticeLink, were assessed by us to be businesses or other organisations (such as councils, government bodies or utility services) (see Table 12). This proportion increased to 7.1% of e-filed claims (Table A6, Appendix 2). Among defendants identified as individuals on JusticeLink were 3.8% defendants that we identified as a business, 2.6% we identified as a government agency, 1.0% as other types of organisations and 0.2% as the Nominal Defendant.²⁷ The proportion of 'individual' defendants that we identified as an organisation was greater for hardcopy registry filed claims (9.9%) than e-filed ones (2.5%) (Table A6, Appendix 2). This may reflect the type of parties using e-filing, with over half of these actions by the Deputy Commissioner of Taxation, who we would expect to have clear information about the entity status of the defendant. Few plaintiffs or defendants recorded as 'organisations' on JusticeLink were identified as 'individuals' in our sample.

²⁷ The Nominal Defendant involves an action for the recovery of damages in respect of the death of or injury to a person caused by the fault of the owner or driver of a motor vehicle that is not an insured motor vehicle in the use or operation of the vehicle on a road in NSW may be brought against the Nominal Defendant. See *Motor Accidents Compensation Act 1999* (NSW) (s.33).

Table 12: JusticeLink categories for ‘individual’ and ‘organisation’ in 1,000 claims finalised in the District Court in 2015, compared to LJF analysis of entity type

LJF entity type	JusticeLink ‘Individual’	JusticeLink ‘Organisation’
	%	%
Plaintiffs	N=712	N=288
‘Individual’ (incl. insurers)	86.4	0.7
‘Individual by tutor’ [#] (incl. insurers)	11.2	0.3
Government (Local, State & Commonwealth)	0.7	37.5
Business	0.7	59.0
Other	1.0	2.4
All Plaintiffs	100.0	100.0
Defendants	N=504	N=487
‘Individual’ (incl. insurers)	92.5	0.2
‘Individual by tutor’ [#] (incl. insurers)	0.0	0.2
Government (Local, State & Commonwealth)	2.6	22.2
Business	3.8	70.6
Other	1.0	4.1
Nominal Defendant	0.2	2.7
All Defendants	100.0	100.0

Source: District Court JusticeLink data on claims recorded as finalised for the first time in 2015.

Cases involving parties classified as individual by a tutor or individual by his/her next friend (‘bhnf’). Referred to as Individual by tutor hereafter.

Notes: Based on a sample of 1,000 random cases. First plaintiffs and first defendants included. ‘Other’ largely consists of not-for-profits, NGOs, sporting groups, interest groups, strata and representatives of other individuals.

We identified ‘organisations’ in our sample 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
- included a ‘trading as’ either within their name or in the ‘trading as’ field.²⁸

However, it is not always clear into which category (individual or organisation) some entities should fit, in particular, small businesses, sole traders, partnerships and professionals. For this reason they are italicised and question marked in Table 7, which describes the entities using the court with the current JusticeLink categories.

Although many District Court *Torts* claims may involve insurers, this information is not available on JusticeLink or on the casefiles. It is likely, therefore, that in both the JusticeLink data and our classification of entity type, the ‘individual’ defendant group in particular includes a large proportion of claims that involve insurers. Our review of the legal

²⁸ First plaintiffs (n=1,000) and first defendants (n=991) from the 1,000 claims are included. The casefile analysis suggests that this may still be a conservative estimate of individuals who may be a party to a matter in their role as a small business operator or professional.

representatives of defendants in selected *Torts* claims suggested a large proportion acted for insurance companies (see Box 2).

Who is suing whom in the District Court?

Our sample of 1,000 claims also enabled us to explore against whom different types of entities were taking action. As Table 13 indicates, the most common actions in the District Court involved:

- individual (with or without a tutor) against another individual (28.0%)
- individual (with or without a tutor) against a business (26.5%)
- individual against government (11.5%)
- government against individual (11.2%)
- business against business (9.2%)
- business against individual (7.8%).

Table 13: Plaintiffs versus defendants by entity type, in 1,000 claims finalised in the District Court, 2015

Plaintiff type	Defendant type					All defendants
	Individual	Government	Business	Other	Nominal Defendant	
	% of claims					
Individual	21.2	11.5	25.6	2.2	1.2	61.7
Individual by tutor	6.8	0.4	0.9	0.0	0.1	8.2
Government	11.2	0.0	0.1	0.0	0.0	11.3
Business	7.8	0.2	9.2	0.2	0.1	17.5
Other	0.3	0.1	0.8	0.1	0.0	1.3
All plaintiffs	47.3	12.2	36.6	2.5	1.4	100.0

Source: District Court JusticeLink data on claims recorded as finalised for the first time in 2015.

Notes: Based on claims from 1,000 random cases. First plaintiff and first defendant selected per case. 'Other' largely consists of not-for-profits, NGOs, sporting groups, interest groups, strata and representatives of other individuals.

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 involves providing more concrete definitions of each of these categories to those entering the data. 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 District Court and who is subject to this action, more detailed categories would be more appropriate. 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 when and if they file a defence by requiring them to self-declare their entity type.

Another approach is to use ABN or ACN numbers to link organisations to the categories already defined through the Australian Business Register (ABR). Table 14 shows that 37.5% of plaintiffs and 33.8% of defendants recorded as an ‘organisation’ had either an ABN or ACN recorded. This rose to nearly half of plaintiffs in *Torts* claims and defendants in *Mercantile law* claims. ABN/ACN will only be useful for analysis if it is made a compulsory field in JusticeLink (and when e-filing) for all organisational parties that are required to have one (mainly businesses).

Table 14: Percentage of ‘organisation’ plaintiffs and defendants with an ABN and/or ACN recorded in JusticeLink

		ABN	ACN	Either
	N	%	%	%
Torts				
Plaintiff	115	7.0	42.6	49.6
Defendant	3,018	11.3	19.0	29.7
Mercantile				
Plaintiff	1,654	8.1	30.1	36.4
Defendant	841	10.5	41.1	49.7
Other claim types				
Plaintiff	115	8.7	34.8	41.7
Defendant	215	12.1	17.7	28.8
All				
Plaintiff	1,884	8.1	31.2	37.5
Defendant	4,074	11.2	23.5	33.8

Source: District Court JusticeLink data for all plaintiffs and defendants involved in claims that were recorded as finalising for the first time in 2015. The accuracy of the ABN / ACN was not assessed.

A question that remains unanswered – and appears difficult to answer reliably with the current data – is the extent to which insurers are involved in motor vehicle accident claims in particular. As discussed previously in Box 2, insurers are currently masked by the fact that such litigation occurs in the name of the individual.

One option to better identify the involvement of insurers in civil claims would be to require notification of insurer (and other ‘interested non-party’) involvement, and to record this on JusticeLink against the relevant party. In Western Australia (WA), for instance, parties are required to notify the Principal Registrar of the identity of any interested non-parties in a

claim, presumably including insurers.²⁹ This is in the form of a letter from the relevant party. However, this information is held on file and not transferred to the WA court data system.³⁰

Consideration could also be given to identifying plaintiffs represented on the basis of 'no win, no fee' arrangements. Having a better understanding of the extent to which insurers and litigation funders are involved in claims would allow an analysis of the impact this has on access to justice, claim progress and outcomes. It would also be valuable to understanding what is driving the business of the court and, potentially, in reviewing fee structures and payments.

²⁹ WA Supreme Court Rules, Order 9A Rule 2

³⁰ As advised by the District Court of Western, Australia Personal Communication, 7/2/17

4. What type of District Court claims are different entities involved in?

In this section, we examine the types of claims brought by different types of plaintiff and defendant using our sample of 1,000 claims. The claim types used here are those that appear in JusticeLink and, as noted in Section 1, these are not always correct. Further evidence of this is apparent in the analysis reported here, and comment made as appropriate. However, for the most part this analysis presents a plausible picture of the kinds of claims that different types of entities are involved in.

Types of claims brought by different plaintiffs

In our sample of 1,000 claims by first plaintiff type, we observed that different types of plaintiffs tended to bring different types of claims (see Table A7, Appendix 2). Specifically:

- more than 80% of all claims brought by 'individual' first plaintiffs were *Torts* claims, largely *Personal injury claims* (48.0%) or *Personal injury – motor vehicle* (18.5%) claims
- nearly all claims brought by 'individuals by a tutor' (children or young people under the age of 18 or people with impaired capacity) were *Torts* claims (97.5%), largely *Personal injury – motor vehicle* claims
- nearly all claims brought by a government agency and finalised in 2015 were classified as *Mercantile law – other* (97.3%). These were actions by the Deputy Commissioner of Taxation to recover debt. On our assessment, these should have been classified as *Mercantile law – statutory obligation of debt recovery – Income Tax Assessment Act* or *Applications under specific acts/laws*, rather than *Mercantile law – other* (see Section 1)
- as might be expected, the majority of the claims made by business plaintiffs in our sample were *Mercantile law* claims: *Mercantile law – other* (50.3%), *Sale of goods and services* (20.0%) and *Consumer/insurance/financial and goods disputes* (12.6%) and *Building disputes* (6.9%).

Plaintiff types bringing different claims

Table 15 indicates the types of first plaintiffs bringing each claim type. Key observations include:

- nearly all (97.3%) *Torts* claims were brought by individual plaintiffs (adult or child), though in 12.5% of *Defamation/deceit/other wrongful act* claims the first plaintiff was a business
- in more than one-third (34.1%) of *Personal injury – motor vehicle* claims finalised, the first plaintiff was a young person or someone with reduced capacity ('individual by their tutor')
- more than 9 in 10 (92.1%) of *Sale of goods and services* claims were brought by businesses
- in most *Consumer/insurance/financial and goods disputes* (71%) and *Building disputes* (78.6%) the first plaintiff was a business.

The high proportion of individuals bringing *Torts* actions, compared to *Mercantile law* actions speaks both to the nature of the issue (personal injuries of various types) and, possibly, the role of litigation funders (e.g. no win no pay legal assistance) in supporting some individuals to access the courts for redress.

Table 15: Type of plaintiff bringing each claim type, claims finalised in the District Court, 2015

		Individual	Individual by tutor	Govern't	Business	Other
	N	%	%	%	%	%
Torts	624	84.6	12.7	0.0	1.9	0.8
Personal injuries	318	93.1	5.0	0.0	1.6	0.3
Personal injuries motor vehicle	179	63.7	34.1	0.0	1.1	1.1
Professional negligence	51	92.2	2.0	0.0	2.0	3.9
Deceit/defamation/other wrongful acts	32	87.5	0.0	0.0	12.5	0.0
Wrongful acts against person/property/goods/land	23	95.7	4.3	0.0	0.0	0.0
Work injuries	21	100.0	0.0	0.0	0.0	0.0
Mercantile law	341	19.4	0.6	32.3	45.7	2.1
Mercantile law – other	257	19.5	0.8	42.8	34.2	2.7
Sale of goods and services	38	7.9	0.0	0.0	92.1	0.0
Consumer/insurance/financial and goods disputes	31	29.0	0.0	0.0	71.0	0.0
Building disputes	14	21.4	0.0	0.0	78.6	0.0
Partnership/Principal & Agent disputes	1	100.0	0.0	0.0	0.0	0.0
Other claim types	35	65.7	0.0	8.6	20.0	5.7
Applications under specific acts/laws	8	75.0	0.0	12.5	12.5	0.0
Workers compensation	4	75.0	0.0	25.0	0.0	0.0
Children, family and de facto relationships	11	90.9	0.0	9.1	0.0	0.0
Real property	9	22.2	0.0	0.0	55.6	22.2
Employment and workplace relations	2	100.0	0.0	0.0	0.0	0.0
Other types of claim (including equity)	1	0.0	0.0	0.0	100.0	0.0
Total	1,000	61.7	8.1	11.3	17.5	1.4

Source: District Court JusticeLink data on claims that were recorded as finalising for the first time in 2015.

Notes: This analysis uses the claim type categories recorded on JusticeLink which are not always accurate (see Section1). Based on claims from 1,000 random cases. First plaintiff and first defendant selected per case. 'Other' largely consists of not-for-profits, NGOs, sporting groups, interest groups, strata and representatives of other individuals. There are no claims in this sample with the claim type *Mercantile law – statutory obligation of debt recovery – Income Tax Assessment Act* claims.

Type of claim by each defendant type

In our sample of 1,000 claims by first defendant type, we observed:

- the most common claims against individual defendants in our sample were *Mercantile law – other* claims (38.8%), *Personal injury motor vehicle* claims (31.7%) and *Personal injury* claims (12.8%). Further analysis indicates that 60% of these *Mercantile law – other* claims were actually claims brought by the Deputy Commissioner of Taxation (and are therefore wrongly classified as *Mercantile law – other*). All were e-filed
- the most common claims against government agencies were *Personal injury* claims (45.5%); *Professional negligence* claims (19.8%) and *Wrongful acts against person/property/goods/ land* (14.9%)
- of note, 7.4% of matters against a government defendant were appeals from the Children’s Court against decisions of the Department of Family and Community Services (noted in the data as *Children, family and de facto relationship*)
- within the broad category of ‘government’ defendants, 80.2% were NSW Government agencies and 16.5% were Local Councils. 59.8% of claims against NSW Government agencies (including health related services) were *Personal injury* or *Professional negligence* claims
- more than half (50.7%) of claims against businesses defendants in our sample were *Personal injury claims*, and 18.2% were *Mercantile law – other* claims. (See Table A8, Appendix 2).

Defendant entity types for each claim type

Table 16 indicates the types of first defendants for each claim type. Key observations include:

- in 84.1% of *Personal injury – motor vehicle* claims in our sample, the defendant was identified as an individual, while a business was identified as the defendant in 8% of claims. While an insurer was likely involved in defending these claims, this information is not recorded by the court
- in nearly 60% of *Personal injury* claims, the defendant was a business, with a further 19% of defendants identified as an individual and 17.4% as a government agency. The identification of the Nominal Defendant as a defendant in 0.9% of these claims is likely to suggest that some of these claims are incorrectly classified, and should be *Personal injury – motor vehicle accident* claims³¹
- defendants in *Deceit/defamation or other wrongful acts* were mainly individuals (40.6%), businesses (37.5%) and government (12.5%)
- overall, nearly two-thirds (64.4%) of *Mercantile law* actions were against individuals and one-third (33.2%) against businesses
- in three-quarters of *Workers compensation* claims, the first defendant was a business
- in 9 of the 11 *Children, family and de facto relationships* claims, the defendant was a government agency. These will be appeals from the Children’s Court regarding child protection issues.

³¹ As indicated on Annex Table A1, more than 95% of Personal injury matters are filed at the registry.

Table 16: Type of defendant for each claim type

	Individual	Government^	Business	Other	Nominal Defendant	
	N	%	%	%	%	
Torts	619	39.1	17.4	38.3	2.9	2.3
Personal injuries	316	19.0	17.4	58.2	4.4	0.9
Personal injuries – motor vehicle	176	84.1	1.1	8.0	0.6	6.3
Professional negligence	51	37.3	47.1	15.7	0.0	na
Deceit/defamation/other wrongful acts	32	40.6	12.5	37.5	9.4	na
Wrongful acts against person/property/goods/land	23	8.7	78.3	13.0	0.0	na
Work injuries	21	0.0	23.8	76.2	0.0	na
Mercantile law	337	64.4	0.9	33.2	1.5	na
Mercantile law – other	255	71.0	1.2	25.9	2.0	na
Sale of goods and services	38	36.8	0.0	63.2	0.0	na
Consumer/insurance/financial and goods disputes	29	58.6	0.0	41.4	0.0	na
Building disputes	14	28.6	0.0	71.4	0.0	na
Partnership/Principal & Agent disputes	1	100.0	0.0	0.0	0.0	na
Other	35	25.7	28.6	40.0	5.7	na
Applications under specific acts/laws	8	25.0	12.5	37.5	25.0	na
Workers compensation	4	25.0	0.0	75.0	0.0	na
Children, family and de facto relationships	11	18.2	81.8	0.0	0.0	na
Real property	9	44.4	0.0	55.6	0.0	na
Employment and workplace relations	2	0.0	0.0	100.0	0.0	na
Other types of claim (including equity)	1	0.0	0.0	100.0	0.0	na
Total	991	47.2	12.2	36.6	2.5	1.4

Source: District Court JusticeLink data on claims that were recorded as finalising for the first time in 2015.

Notes: This analysis uses the claim type categories recorded on JusticeLink which is not always accurate (see Section 1). Based on claims from 1,000 random cases. First defendant selected per case. There were 9 claims without a defendant. 'Other' largely consists of not-for-profits, NGOs, sporting groups, interest groups, strata and representatives of other individuals.

There are no claims in this sample with the claim type *Mercantile law – statutory obligation of debt recovery - Income Tax Assessment Act* claims.

Who is taking action against whom, for different claim types?

We also examined who is taking action against whom by broad claim type (*Torts* or *Mercantile law*). As indicated on Table 17:

- more than one-third (35.1%) of all *Torts* claims involved an individual plaintiff against a business defendant, while 27.9% of claims involved an individual plaintiff against an individual defendant (note, insurers not visible in the data)
- a further 10.5% of *Torts* claims involved an individual (by their tutor) against an individual
- less than 2% of *Torts* claims involved a business plaintiff, largely against another business (1.3% of all claims).

Table 17: Who is taking action against whom: Torts claims

Torts claims N=691	Defendant type					
	Individual	Government	Business	Other	Nominal Defendant	All defendants
Plaintiff type	% of claims					
Individual	27.8	16.7	35.1	2.9	1.9	84.5
Individual by tutor	10.5	0.6	1.5	0.0	0.2	12.8
Business	0.5	0.0	1.3	0.0	0.2	1.9
Other	0.3	0.2	0.3	0.0	0.0	0.8
All plaintiffs	39.2	17.5	38.2	2.9	2.3	100.0

Source: District Court JusticeLink data on claims that were recorded as finalising for the first time in 2015.

Notes: Based on 691 *Torts* claims from 1,000 random cases. First plaintiff and first defendant selected per case. 'Other' largely consists of not-for-profits, NGOs, sporting groups, interest groups, strata and representatives of other individuals.

As might be expected, the profile differed in *Mercantile law* claims. Table 18 indicates that:

- the highest proportion of *Mercantile law* claims in our sample – nearly one-third (32.0%) –involved a government plaintiff taking action against an individual defendant
- a further 23.7% involved a business plaintiff against a business defendant
- 10.4% involved an individual against an individual.

Table 18: Who is taking action against whom: Mercantile claims finalised in the District Court, 2015

Mercantile law claims N=337	Defendant type				All defendants
	Individual	Government	Business	Other	
Plaintiff type	%	%	%	%	%
Individual	10.4	0.3	8.0	0.9	19.6
Individual by tutor	0.6	0.0	0.0	0.0	0.6
Government	32.0	0.0	0.3	0.0	32.3
Business	21.1	0.6	23.7	0.3	45.7
Other	0.3	0.0	1.2	0.3	1.8
All plaintiffs	47.3	12.2	36.6	2.5	100.0

Source: District Court JusticeLink data on *Mercantile law* claims that were recorded as finalising for the first time in 2015.

Notes: Based on 337 *Mercantile law* claims from 1,000 random cases. First plaintiff and first defendant selected per case. 'Other' largely consists of not-for-profits, NGOs, sporting groups, interest groups, strata and representatives of other individuals.

5. Which claims are defended in the District Court?

Information about the types of claims defended provides additional insight into how the courts are used, and by whom. It is an indication of the active participation of defendants and potentially a more active role played by the court in resolving the claim. To defend a claim, defendants must file a notice of defence, generally within 28 days of receiving notice of the claim.³² If they do not, and a default judgment is entered against them, the court may allow a defence within a specified time thereafter. No defence notice is required for an appeal or for cases that commence by a summons, rather than by a statement of claim.

Definition and quality of data on defended claims

Notices of defence are captured by JusticeLink with information about who filed the notice and in what capacity (defendant, cross-defendant etc.).

Not all defendants who were recorded as having filed a notice of defence were included in the data about the parties to the claim that we were provided with. We found 120 defendants filing notices of defence in claim proceedings for which we did not have a matching identification key in the 'parties data' (that is, they did not appear in our base count of plaintiffs and defendants). This may be because those defendants had been assigned incorrect or new identification keys at the point of defence filing. We also found from our casefile analysis that not all claims for which the hardcopy file indicated a defence was filed had this information on JusticeLink. Further investigation is required to determine the reason for these data issues, but as neither was numerically that high we present the findings here as at least indicative of variations in the extent to which claims are defended.

For the purpose of claim-based analysis we have included these 120 notices of defence as evidence that a defence notice was filed in the claim. However, this discrepancy does raise a concern regarding the defendant based analysis. We do not know, for instance, whether these defendants were legally represented or not.

We also note that just over one in ten defendants are recorded as having legal representation but not filing a defence. While there are a number of possible explanations this may also warrant further investigation.³³ A particular issue is that appeals and claims that commence by a summons do not require a notice of defence to be filed. While the defendant may defend or otherwise respond to the summons, this activity may be reflected in other notices (e.g. notice of appearance). However, these do not necessarily indicate

³² Uniform Civil Procedure Rules, 2005, Reg 14.3.

http://www.austlii.edu.au/au/legis/nsw/consol_reg/ucpr2005305/s14.3.html

³³ Possible explanations include: the case was an appeal for which no defence was required to be filed (of the 1,054 defendants with legal representation but no defence filed, 139 were defendants to an appeal); the defendant's legal representative filed a notice of appearance, but not a defence; the plaintiffs provided information about defendant's legal representation; the information was transferred from other cases; or there were problems with the data extract we were provided with on defence notices.

that the defendant is defending the claim. Further consideration is therefore required as to how to identify which claims are defended or otherwise responded to.

Types of claims defended in the District Court

Overall, JusticeLink data indicates that 56.8% of defendants to all claims (n=8,673) served a notice of defence. Given the issues described above with the data, Table 19 presents an alternative analysis to indicate the percentage of all claims in which at least one defendant filed a defence (60.5%). As there is no requirement to file a defence for appeals or summons, Table 19 also indicates the proportion of claims in which a defence was filed for claims not included in the four main appeal lists and not commenced as a summons. Excluding these, increases the proportion of claims where a defence was filed to 66.4%.

In listed cases, a defence was filed in three-quarters of claims. Cases that the court does not expect to require case management are not assigned to a list (not listed). However, a defence was filed in 9.0% of these not listed claims. We have retained the listed/not listed distinction here because what happens to a case following this initial categorisation differs. Most *Mercantile law – not listed* claims, for instance, either have no hearing or one hearing to return a default judgment. However, default judgments may prompt a defence to be filed, at which point the case may become actively case managed. As we could not distinguish between cases that had never been case managed and those that became case managed at a later date, we have retained the initial categorisation of not listed for all the analysis presented here.

The claims most likely to have a defence notice filed related to *Employment and workplace relations* (92.3%) and *Work injuries* (88.2%). Those least likely to have a notice of defence filed were *Children, family and de facto relationships* (3.6%) – as most of these are appeals from the Children's Court.

Table 19: Percentage of District Court claims recorded as defended by at least one defendant

	Not listed	Listed	All	Excluding appeals and summons
	N=1,446	N=4,881	N=6,327	N=5,748
	%	%	%	%
Torts	na	77.1	77.1	85.2
Personal injuries - other	na	84.0	84.0	88.0
Personal injuries motor vehicle	na	63.5	63.5	81.2
Professional negligence	na	86.1	86.1	87.3
Deceit/defamation/other wrongful acts	na	62.6	62.6	71.3
Wrongful acts against person/property/goods/land	na	76.8	76.8	78.7
Work injuries	na	88.2	88.2	91.3
Mercantile law #	8.5	80.9	29.9	30.6
Mercantile law - other	7.1	80.8	26.5	27.1
Sale of goods and services	16.5	92.3	40.3	39.8
Consumer/insurance/financial and goods disputes	6.9	88.5	30.2	30.2
Building disputes	23.8	58.5	50.0	64.2
Partnership/Principal & Agent disputes	25.0	100.0	72.7	72.7
Statutory obligation of debt recovery	14.3	100.0	40.0	40.0
Other claim types #	27.8	40.2	38.6	71.1
Applications under specific acts/laws	16.7	10.7	11.1	58.3
Workers compensation	33.3	85.5	83.1	84.4
Children, family and de facto relationships [#]	na	3.6	3.6	100.0
Real property	24.0	67.9	47.2	49.0
Employment and workplace relations	100.0	90.9	92.3	92.3
Other types of claim (including equity)	na	50.0	50.0	100.0
Total	9.0	75.7	60.5	66.4

Source: District Court JusticeLink claims that were recorded as finalising for the first time in 2015, all claims for which at least one defendant filed a defence notice to a claim proceedings (including 120 not included in the parties' data)

Note: This analysis uses the claim type categories recorded on JusticeLink which are not always accurate (see Section 1).

Included in the figures in the first three columns are claims that commenced with a summons; those from Appeal lists; and appeals from the Children's Court (n=52) for which no defence notice is required to be filed.. Less than 10 cases.

Table 20 indicates that overall, just over a quarter of notices of defence were recorded as filed within 2 months (27.4%) and nearly three-quarters within 6 months (73.9%).

On average, defence notices to *Torts* claims were filed later than those to *Mercantile law* or *Other* types of claims, with over a quarter (28.6%) recorded as filed more than 6 months

after the claim filing date. This may reflect the nature of such matters and the legal administrative rules that apply.³⁴

Table 20: Number of days between the filing of a claim and the filing of a notice of defence, for District Court claims where a defence was filed

	Torts	Mercantile	Other	All
	N=3,917	N=866	N=144	N=4,927
	%	%	%	%
Defence filed				
Within 7 days of claim	0.5	0.1	0.0	0.4
Within 8 to 30 days	6.1	12.1	13.9	7.4
Within 1 to 2 months	15.7	35.8	25.7	19.5
Within 2–6 months	49.1	35.8	41.7	46.6
Within 6–12 months	20.5	11.4	13.2	18.7
Over a year after	8.1	4.7	5.6	7.4
Total	100.0	100.0	100.0	100.0

Source: District Court JusticeLink data for all claims where one or more defendants filed a defence notice to a claim proceedings.

Note: Date is the earliest lodgement date for any defendant to the claim and the claim lodgement date.

As discussed in Section 2, the only information on the type of defendant is whether they are recorded as an individual or organisation and as corporate or non-corporate for court fee purposes. Defendants registered on the system as an individual and paying the corporate fee were most likely to file a defence (93.4%) (Table 21). Individuals paying the non-corporate fee were the least likely to file a defence (51.2%, particularly in *Mercantile law* (29.6%).

Table 21: Percentage of defendants to District Court claims (excluding summons and appeals) filing a defence, by type of entity on JusticeLink and broad claim type

		Torts	Mercantile	Other	All
	N	%	%	%	%
Individual & non-corporate	3,510	81.2	29.6	47.7	51.2
Individual & corporate	561	93.8	83.3	100.0	93.4
Organisation & corporate	3,729	88.3	52.8	80.2	80.6
Organisation & non-corporate	94	86.8	45.5	0.0	81.9
All	7,894	86.8	36.6	67.0	68.4

Source: District Court JusticeLink data on all defendants in claim-related proceedings, excluding claims commenced by summons and cases in Appeal lists

Table 22 provides more detail of the types of entities involved in defended claims, for those types of claims where a notice of defence could be filed. It indicates that these types of claim were most commonly defended when the first defendant was a government entity (87.0%) and where the first plaintiff was an individual (83.1%).

³⁴ JusticeLink can record both the create date for the entry of the notice and the lodgement date. In the data we were provided, there was very little difference between the two.

Claims were least likely to be defended when a government entity was the plaintiff (6.2%) (such as taxation matters). The relatively low proportion of claims with a notice of defence where the plaintiff was an individual by a tutor, compared to individuals, may reflect alternative court procedures in dealing with these claims or data issues.

Table 22: Percentage of claims (excluding appeals and summons) defended in the District Court, 2015 by plaintiff and defendant type

	N	Percentage of claims defended#
In claims where the first plaintiff was:		
an individual	581	83.1
a government entity (Local, State & Cwth)	112	6.3
a business	169	40.2
an individual by a tutor	40	72.5
another entity type	11	27.3
In claims where the first defendant was:		
an individual	419	50.4
a government entity (Local, State & Cwth)	108	87.0
a business	342	74.0
another entity type	22	77.3
an individual by a tutor	0	na
the nominal defendant	14	78.6

Source: District Court JusticeLink data on claims recorded as finalised for the first time in 2015 and defence notices filed
 Note: Based on claims (excluding appeal list and claims commenced by summons) from 1,000 random cases, first plaintiff and first defendant only. # Filed by any defendant.

Improving information about defended claims

As notices of defence are only required to be filed for cases commenced by a statement of claim, further consideration is required to determine how to identify the proportion of all cases that are actively defended or in which the respondent has played an active role, including those claims commenced by summons.

Our analysis indicated some anomalies in the data provided on defence notices, such as the inclusion of defendants with entity identifiers that could not be matched to those of a party to the claim. We would recommend exploring the scope for improving the linking of notices to the defendants recorded for the relevant claim proceeding on JusticeLink.

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

Given the nature of claims in the District Court, parties would generally be expected to have legal representation. However, this is not always the case. 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 claim.

We consider here how information on representation recorded on JusticeLink differs for plaintiffs and defendants and whether there are particular claim types for which the parties are more or less likely to be represented. Our more detailed entity categories also identify whether certain types of parties are more or less likely to be represented. We explore the feasibility of using the dates for which legal representation is recorded to assess how representation rates vary at different stages of a case.

Definition and quality of representation data

Representation in the District Court appears to be reasonably well recorded on JusticeLink with full details of each lawyer, including their name and address and the dates for which they were representing the party. However, we did find some discrepancies between the correspondence on the paper casefiles (mention of lawyers, but no lawyer recorded on JusticeLink) and the dates of representation we were provided with from JusticeLink.³⁵ The latter could be up to a month or more after it would appear that representation commenced. Also, there may be instances where an officer of the Department (such as the Australian Taxation Office) or some other authorised officer (rather than a lawyer) has been recorded as the representative.

Representative details can be linked to each party within each proceeding, and within each proceeding within each case. However, concluding whether the parties to a claim are represented or not isn't straightforward, as decisions need to be made about counting representation, including whether it is:

- during the claim proceeding only or for any proceeding within the case
- counted for each party, any party or the first named party only
- at any point during the case or for specific events within a case.

Representation during proceedings or cases?

Representation is recorded separately for each proceeding within a case so it is feasible to only count representation for the claim proceeding, separate from other proceedings. However, we noted that where there are multiple proceedings related to a case, such as a separate cross-claim, the legal representatives may be entered against the cross-claim and not the original claim – although it is a fair presumption that in practice their advice covers both matters. Table 23 shows that this has only a marginal impact on overall representation

³⁵ For each legal representative the data included Effective_from and Effective_to dates.

rates. However, to avoid undercounting the extent of representation – particularly at finalisation (see below) we report from here representation if it was recorded for any plaintiff or defendant for any proceeding within the case.

Table 23: Representation rates of plaintiffs and defendants in District Court claim proceedings and claim cases (multiple proceedings)

	Plaintiffs		Defendants	
	Claim proceeding	Claim case ¹	Claim proceeding	Claim case ¹
	N=6,721		N=8,673	
	%	%	%	%
No legal representation	5.5	5.4	30.1	29.8
Legal representation	94.5	94.6	69.9	70.2
One representative	82.9	82.7	58.5	58.3
Two representatives	10.0	10.3	8.5	8.8
Three or more	1.6	1.7	3.0	3.1

Source: JusticeLink data on all participants in claim cases that have a first finalisation date in 2015.

Note: 1 As we were not provided with all proceedings relating to claims finalising for the first time in 2015, these figures may be a slight underestimate of case representation.

Representation of parties

Legal representation rates are generally high for plaintiffs and defendants in District Court cases, but there is some variation by type of claim (Table 24). Nearly all plaintiffs in *Torts* claims were recorded as represented (96.8%), with the highest rate for *Work injury* claims (99.2%). Representation rates were also high for *Mercantile law* claims (92.9%), other than *Statutory obligation of debt recovery* (40.0%).

Defendants are also often represented in *Torts* claims, with 88.6% recorded on JusticeLink as represented at some point during the case. Rates are far lower for *Mercantile law* claims (37.9%), particularly *Consumer/insurance/financial and goods disputes* (33.9%) and *Mercantile law – other* (34.3%). However, this is a reflection of the lack of active involvement of defendants in some claims as the rate of representation of defendants in listed claims is far higher at 71.6% of listed *Mercantile law* cases.

Table 24: Representation rates for plaintiffs and defendants in District Court claims by type of claim

	Plaintiffs	Defendants	
	All cases	All cases	Listed
	N=6,721	N=8,673	N=6,733
	%	%	%
Torts	96.8	88.6	88.6
Personal injuries - other	97.6	90.5	90.5
Personal injuries motor vehicle	96.3	82.6	82.6
Professional negligence	95.9	95.4	95.4
Deceit/defamation/other wrongful acts	91.7	82.8	82.8
Wrongful acts against person/property/goods/land	96.4	87.7	87.7
Work injuries	99.2	93.7	93.7
Mercantile law	92.9	37.9	71.6
Mercantile law – other	92.9	34.3	68.0
Sale of goods and services	95.3	47.3	79.2
Consumer/insurance/financial and goods disputes	93.8	33.9	79.5
Building disputes	89.8	70.3	76.8
Partnership/Principal & Agent disputes	90.9	75.0	100.0
Statutory obligation of debt recovery	40.0	50.0	100.0
Other claim types	78.3	59.9	64.3
Applications under specific acts/laws	62.1	58.7	60.2
Workers compensation	95.5	91.6	91.3
Children, family and de facto relationships	65.6	51.8	51.8
Real property	93.2	44.7	66.1
Employment and workplace relations	100.0	87.5	84.6
Other types of claim (including equity)	71.4	86.7	86.7
Total	94.6	70.2	84.6

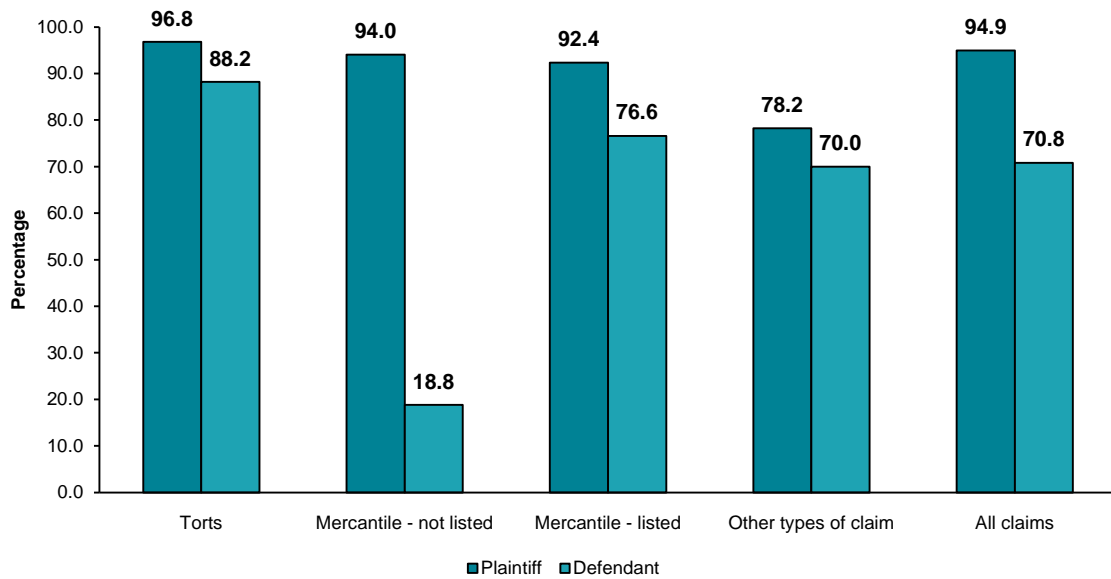
Source: JusticeLink data on all plaintiffs and defendants in claims cases recorded as first finalised in 2015.

Note: This analysis uses the claim type categories recorded on JusticeLink which is not always accurate (see Section 1).

Representation in claims

A slightly different profile of representation is provided by looking at the proportion of claims for which the parties had representation, rather than the proportion of all plaintiffs and defendants that are represented. Where there are multiple parties to a claim, some may be recorded on JusticeLink as legally represented and some may not. Options include reporting on the first named plaintiff/defendant, on whether any party is recorded as represented, or whether all parties are represented. Figure 4, for example, shows the percentage of claims for which JusticeLink had a record of the first plaintiff/defendant having legal representation at some point in the case.

Figure 4: First named plaintiff / defendant represented at some point during the case, by claim type



Representation by entity type

As the data provided to us only included full details for first named plaintiffs and defendants, our analysis of representation by type of entity is only based on these fields.

Table 25 indicates there is little difference in the rates of representation between *most* types of plaintiffs, ranging from 92.6% of business plaintiffs to 97.5% of individuals by their tutor. However, ‘other’ plaintiff types, including not-for-profit organisations and clubs, were represented in only 78.6% of claims.

There is more variation among defendants, ranging from only 54.2% of individual defendants being represented to 94.2% of government defendants.

Table 25: Representation by entity type for first plaintiff and first defendant

		Rate of representation	
First plaintiff type	N	%	
Individual	617	96.1	
Individual by tutor	81	97.5	
Government (Local, State & Commonwealth)	113	96.5	
Business	175	92.6	
Other	14	78.6	
All	1,000	95.4	
First defendant type [^]	N	%	
Individual	467	54.2	
Government (Local, State & Commonwealth)	121	94.2	
Business	363	81.8	
Other	25	80.0	
Nominal Defendant	14	92.9	
All	990	70.3	

Source: LJF coding of a sample of 1,000 random claims cases from District Court JusticeLink claims recorded as finalised for the first time in 2015.

Notes: First plaintiff and first defendant selected per case. 'Other' largely consists of charity and religious organisations.

[^] 9 cases had no defendant and the 1 defendant that was individual by tutor was excluded.

Representation at different stages of a claim

The findings reported so far indicate the extent to which individual plaintiffs and defendants had a legal representative recorded against them, *at any point* during the case. But, in practice, whether the parties have legal representation can vary during the course of a case. For instance, defendants to new actions are unlikely to have representation recorded at the date the plaintiff files the claim, but are more likely to have representation at the point they file a defence and at finalisation for determined cases.

JusticeLink records the start and end date for each legal representative per party. While this is potentially helpful data, we observed that these dates did not necessarily align with specific events – such as lodgement or filing of defence, which may indicate a delay in entering the information onto the system. So although the inclusion of dates theoretically enables an analysis of whether the parties were represented at specific points, such as at the time the claim was filed and at the point of finalisation, relying on the precise dates would undercount representation. Instead we report here on the proportion of parties that were represented within a certain time period of the relevant date.

At lodgement of claim

Table 26 indicates that there was evidence from JusticeLink that 62.6% of plaintiffs had a legal representative from the date their claim was lodged, and this had risen to 83.6% within 7 days. Not surprisingly, few defendants had a legal representative recorded on

JusticeLink within 7 days of lodgement (2.7%)³⁶ but within a month, by which time the claim will have been served, a quarter did so (25.8%). The latter increases to 31.4% when only listed claims, which are more likely to be defended, are considered.

Table 26: Legal representation from date of lodgement for plaintiffs and defendants in District Court claim cases

	Plaintiff	Defendant – listed claims	Defendant – all claims
	N=6,713	N=6,710	N=8,650
	%	%	%
On lodgement date	62.6	0.6	0.5
Within 7 days of lodgement	21.0	2.7	2.2
Within 8–30 days of lodgement	5.3	28.1	23.1
More than 30 days	5.7	53.1	44.3
No legal representation	5.4	15.5	29.9

Source: District Court JusticeLink data for all plaintiffs and defendants to claims cases recorded as finalised for the first time during 2015. Includes all legal representation on any proceeding within the case.

Note: 8 plaintiffs and 23 defendants are excluded due to missing information on the start date of legal representation.

At defence filing

For reasons outlined above, representation at the date of defence filing is more relevant for defendants than at the date the claim was initially lodged. JusticeLink data indicates that in the case of multiple defendants, not all file and not all do so on the same date. There are also many instances of multiple filings of defence notices by one defendant recorded against a claim proceeding (as well as those recorded against other proceedings within the claim). Given this complex picture, two dates were considered: the earliest and the latest date on which a defence notice was filed by each defendant, and whether each date fell between the earliest and latest dates recorded for legal representation.³⁷

In practice there was very little difference, with less than a 0.1% increase in representation when the latest date was used (92.6% vs 92.7%).

Table 27 shows the proportion of defendants who filed a defence that were legally represented on the date of their latest defence filing.³⁸ Of the 56.8% of defendants that filed a defence, 92.7% were recorded as having representation at that time. The percentage was highest in *Torts* (95.1%) and lowest for *Mercantile law* claims (83.5%). While only a small number of not listed matters are defended, these claims had high levels of representation, no doubt reflecting the kind of claims/defendants that get defended having initially not been listed.

³⁶ Of the 236 defendants with a legal representative recorded from the date of lodgement, 72.5% had claims in the General List and 14.4% claims in the Infant Approval list.

³⁷ This approach will over-count legal representation where there was a gap in representation on the date at which the defence was filed. Our assessment is this is unlikely to have occurred.

³⁸ Only defendants included in the parties' data, for whom information on legal representation was available are included here. Excluded are the additional 120 defendants that filed a notice of defence, for which we have no further information. It was also not possible to include the parties to cases commenced by a summons which were actively defended (but not required to file a notice of defence). The reasons for this are discussed in Section 5.

However, as noted in Section 5, there are some disparities between the data we received on defence filings and the information on the legal representation of parties, so these findings should be treated with caution.

Table 27: Percentage of District Court claim defendants legally represented on the date at which they filed a notice of defence

	Not listed/listed	Not listed	Listed	All
	N	%	%	%
Torts	na/3,917	na	95.1	95.1
Mercantile law	165/701	98.8	79.9	83.5
Other claim types	12/132	100.0	82.6	84.0
All	177/4,750	98.9	92.5	92.7

Source: District Court JusticeLink data for all defendants that filed a defence notice on a claim proceeding. Where there were multiple defences filed, the latest defence date is used.

At finalisation of claim

With regards to the finalisation of claims, JusticeLink data indicated that for a very small proportion of plaintiffs (0.8%), their legal representation had been withdrawn prior to the finalisation date that was recorded on JusticeLink (Table 28). The equivalent proportion for defendants was slightly higher at 1.5%.

For an even smaller proportion of defendants (0.2% and 0.1% respectively) there was evidence of records being updated upon finalisation of the case, but for most this did not occur. Due to the small numbers involved, further research is required to validate the extent to which legal representation is withdrawn prior to case finalisation.

Table 28: Legal representation around the date of case finalisation for plaintiffs and defendants in District Court claim cases

	Plaintiff	Defendant – listed claims	Defendant – all claims
	N=6,721	N=6,733	N=8,673
	%	%	%
Ended more than 30 days before finalisation	0.7	1.3	1.3
Ended 8–30 days before finalisation	0.1	0.1	0.2
Ended within 7 days of finalisation	0.2	0.1	0.1
Not ended within 7 days	93.5	83.0	68.6
No legal representation	5.4	15.4 [^]	29.8 [^]

Source: JusticeLink data on plaintiffs and defendants of District Court claims (listed and not listed).

Notes: The date of first finalisation is that provided within the JusticeLink data as the first determined date.

[^] These figures include claims that were not defended.

Improving information about representation

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

- whether representation in one or any proceeding in a matter is counted
- who is counted as being represented (the first or each plaintiff/defendant in a matter)
- the point(s) in time in which representation is counted. As indicated above, if representation status is assessed at when a SOC is lodged, compared to when a case is finalised, defendant representation will be undercounted (as no SOC would have been served, and there is no need to interact with the Court unless and until a defence is filed)
- whether the type of representative should be reported (e.g. lawyer or authorised officer).

Our analysis also indicates that even when parties are represented by a lawyer at some point in the process from filing to finalisation, this information may not be included on JusticeLink. Our casefile sample indicated cases where a lawyer's signature was evident on a statement of claim or a consent order, but no lawyer was listed on JusticeLink as a participant (or indicated at any stage on the Record of Proceedings (ROP)). This finding suggests that the data reported here is a conservative estimate of the proportion of parties represented at some point. This is an area for improvement and may be less of an issue with the move to e-filing (though we didn't test that here).

7. How do cases progress in the District Court?

What is involved in progressing a claim through the District Court and how is this best measured? How active is the Court's involvement and how might this vary by the type of claim? Information about how cases progress can provide a baseline against which case management reforms can be assessed.

The judiciary and registrars are not actively involved in every case filed at the District Court (not case managed). Claims that are not case managed are not allocated to a list. Not listed claims most commonly result in default judgments or lapse through no activity.

There are several possible metrics to describe the progress of cases including 'events' (such as sittings or listings), orders made by the court and the length of time from filing to finalisation. In this section, we explore the available information on court events (specifically 'sittings') and orders. Length of time from filing to finalisation is discussed in Section 10.

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

Definition and quality of case progression data

Events

The data provided to us included information on 'listings' and information on 'sittings'. Some event types appeared in both data fields and some only in one data field or the other (either sittings or listings) (Table A9, Appendix 2). For the purpose of this analysis we have focused on 'sittings' and these are referred to as events in this section.

JusticeLink data on events includes the region and location of the event, the event date and event type. The event types included activities which were party driven (e.g. motions and return of subpoena), and activities which were court driven (e.g. directions and hearings).

In the JusticeLink data for cases finalised in 2015, there were 50 different types of events (Table A9, Appendix 2). Events in this section have been simplified for reporting purposes into the 8 broad categories described in Table 29.

Table 29: LJF broad categories of events and descriptions

LJF broad event type	Description
Default judgment activity	<p>A default judgment here refers to any activity related to a default judgment and includes the event types of default judgment – liquidated – fail validation, default judgment – liquidated - pass validation.</p> <p>More broadly, default judgments are a judgment made against the defendant without having a hearing in court, and can be made if the defendant has not filed a defence, filed an acknowledgement of liquidated claim or paid the amount on the SOC (including interest and fees) within 28 days of being served with the SOC</p>
Directions	Court-initiated. The event types which are included here consist of callovers, directions to certain lists (e.g. case managed list, defamation list, etc.), pre-trial conferences and status conferences
Enforcement activity	Includes the event types related to enforcement activity of the court including examination, garnishee order, instalments and writ for levy of property
Hearings	Includes hearings, judgments, reserved judgments, approval and infant approval
Mention	An event type that is not for hearing, and is held to assist parties with managing, resolving or proceeding to hearing. Can be before a judicial officer, registrar or judicial registrar. The event type included in this category is mentions only
Motion	An action a party initiates/is taking, there is a fee involved with filing a motion. The event types included in this category are motion, motion (general motions list), motion (hearing list)
Return of subpoena	<p>An information-collecting type of activity on a case where the parties file a subpoena. The return of the subpoena event type is the physical act of the evidence being brought into the registry, or the opportunity for the other side to object to the subpoena and say why they should not comply.</p> <p>The event types included in this category are early return of subpoena, return of subpoena and return of summons/subpoena</p>
Other	The events which were not classified into any of the above categories. The event types included in this category consists of arbitration, general list, mediation, review and short matters
<p>Note: These events may or may not be before a judicial officer.</p>	

Sittings

Events by claim type

For the 6,327 claims which were recorded as finalised in 2015, there were 43,981 events of various kinds recorded. The most common was *Return of subpoena* (45.1%), followed by *Directions* (40.8%). *Hearings* comprised 11.1% of all events.

Table 30 shows the average number of each event by broad claim type, with *Torts* claims involving the highest average number of *Return of subpoenas* (4.6). *Mercantile – listed* claims had the highest average number of *Directions* (4.0) followed by *Torts* (3.5) and *Other* claim types (2.9).³⁹

Table 30: Average and total number of events for claims finalised in 2015 by broad claim type

Events (Broad categories)	Average number of events					Total events	
	Torts	Mercantile not listed	Mercantile listed	Other claim types	Total	N	%
	Mean	Mean	Mean	Mean	Mean		
Return of subpoena	4.6	0.1	1.4	1.3	3.1	19,829	45.1
Directions	3.5	0.3	4.0	2.9	2.8	17,961	40.8
Hearings	0.9	<0.1	1.3	1.5	0.8	4,903	11.1
Default judgment activity	<0.1	0.3	<0.1	<0.1	0.1	489	1.1
Mention	0.1	<0.1	0.1	0.1	<0.1	292	0.7
Enforcement activity	<0.1	0.1	0.1	0.1	<0.1	213	0.5
Other [^]	<0.1	<0.1	<0.1	<0.1	<0.1	200	0.5
Motion	<0.1	<0.1	<0.1	<0.1	<0.1	94	0.2
Total	9.1	1.0	6.8	6.0	7.0	43,981	100.0

Source: District Court JusticeLink claims proceedings recorded as finalised for the first time in 2015.

[^] see Table 29 for descriptions of 'Other' and the list of inclusions of events.

Time from lodgement to first event

Depending on the type of claim, the date for the first event can be set at the time of filing. Of the 6,327 claims finalised in 2015, there were 5,354 claims with a valid first event date recorded on JusticeLink. A review of the events for the remaining 973 claims indicates they did not have a first event,⁴⁰ or the date recorded on JusticeLink preceded the lodgement date.⁴¹ This raises questions about the quality of the date information for events and would require additional investigation.

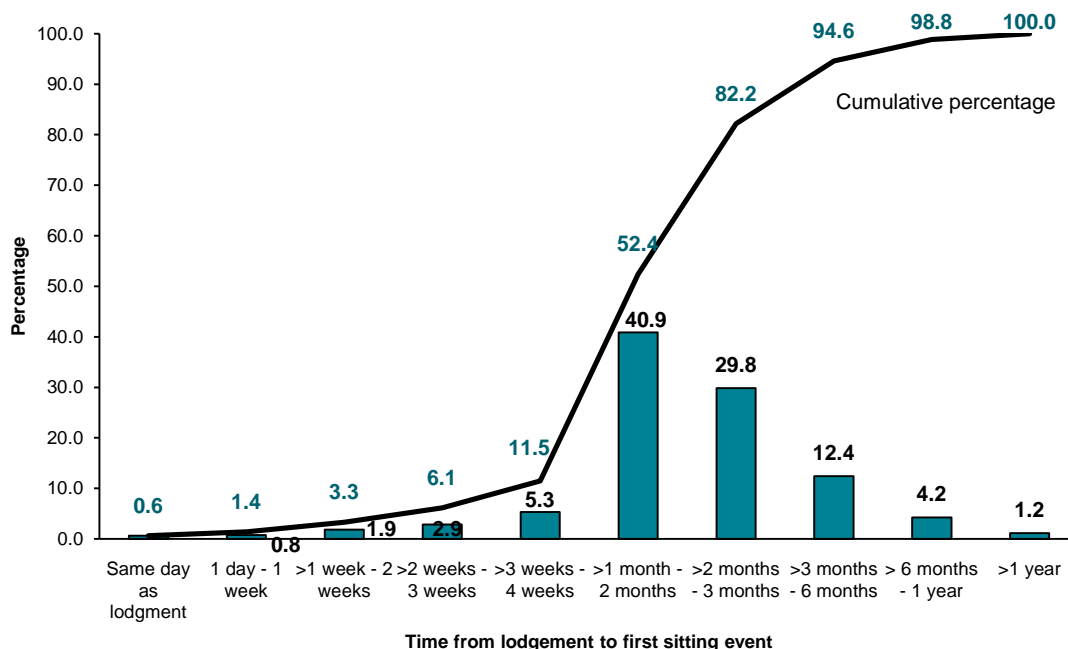
³⁹ *Other* claim types include a combination of listed and not listed claims.

⁴⁰ Claims without a first sitting event could include claims which lapsed or closed (n=956).

⁴¹ The number of claims with first sitting event dates which preceded the lodgement date was 17. These were all claims in the general list. We are informed by the court that a possible explanation for some of these instances is that urgent applications – freezing orders and stays, for example – are sometimes listed before the court prior to the file

For those matters with an event date, the average number of days from lodgement to first event was 75. The longest period of time for a claim was over 3 years (1,351 days). Just over half (52.4%) of claims progressed to event within 2 months, and the majority of claims had a first event within 6 months (94.6%) (Figure 5).

Figure 5: Time from lodgement to first event



The average number of days from lodgement to first event varied by the broad claim type, with not listed *Mercantile law* claims averaging a higher number of days from lodgement to first sitting (147 days) compared to listed *Mercantile law claims* (109 days), *Other* claim types (75 days) and particularly *Torts* claims (59 days) (Table 31).⁴² This may be because the ‘first event’ for a not listed claim is the final event (e.g. a default judgment).

Table 31: Time from lodgement to first event, by broad claim type

Claim type	N	Average number of days	Within 1 month	Within 1–3 months	Greater than 3 months
		Mean	%	%	%
Torts	3,952	59	11.9	81.2	6.9
Mercantile law – not listed	591	147	1.2	34.5	64.3
Mercantile law – listed	559	109	8.9	45.4	45.6
Other claim types	252	75	35.3	46.8	17.9
Total	5,354	75	11.5	70.7	17.8

Source: District Court JusticeLink claims proceedings recorded as finalised for the first time in 2015.

for the claim being created. However, the data available on orders relating to these does not enable us to quantify this.

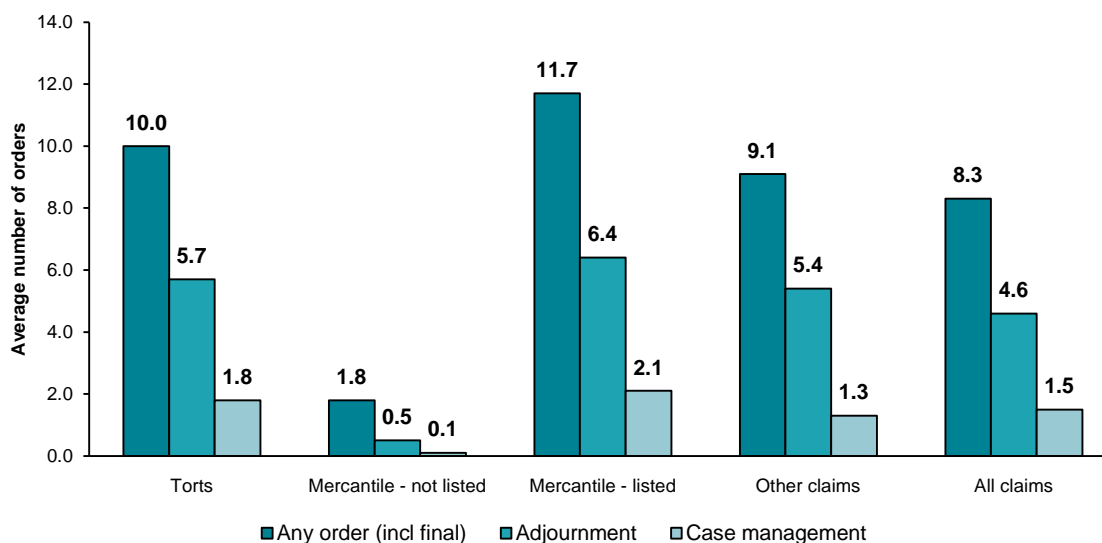
⁴² Some not listed *Mercantile law* claims may be finalised by default judgment at first sitting.

Orders

An alternative way of monitoring the amount of activity in a case is to consider the orders made during the course of a claim. The most common types of orders were adjournments (average 4.6 per claim), and various case management orders (averaging 1.5 per claim) (Figure 6).

Including final orders and those to vacate listing dates (which may be due to a finalisation of the case), there were an average of 8.3 orders per claim proceeding for cases recorded as finalising for the first time in 2015. *Mercantile law – listed* claims and the highest average number of adjournments (6.4) and case management orders (2.1).

Figure 6: Average number of orders per claim proceeding by type of claim



Referral to mediation

Another order type captured on JusticeLink is ‘referral to mediation’ (assumed to be court based mediation only rather than private or external mediation).⁴³ These orders were provided to us separately and are not included in the above counts. In total, 23 claims were recorded as referred to mediation at some point (one claim twice). The collection of this data should enable the impact of referral to mediation to be monitored, though the number of such cases is currently too small to do this reliably.

⁴³ We are informed by Court Services that there are two relevant order types on JusticeLink: ‘refer to mediation’ and ‘refer to mediation (external)’. In the data provided the orders were described only as the former.

Improving information about the progression of cases

A range of factors could be considered to ensure more accurate reporting of the progression of cases in the District Court:

- clarification around the differences between 'sittings' and 'listings' for instance in a data dictionary
- improved definitions of the types of events which are included as a sitting and as a listing. This could assist in a better understanding of the differences between these, and how this information is being used by the District Court
- the identification of different event types, as they are currently a combination of events and activities which are either party driven, administrative or judicial. Clarification in the data around these could assist in better understanding the different aspects of the progression of cases
- further investigation into the quality of the date information for events, following the discovery of 17 claims with first sitting event dates which preceded the lodgement date (see note 41 for possible explanation)
- consideration could also be given to utilisation of the ROP data in further understanding the progression of cases from lodgement to finalisation, though we recognise this is a very complex dataset.

8. How are District Court claims finalised?

An understanding of how civil claims are finalised is likely to be of interest to the parties involved in District Court civil claims as well as policymakers involved 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 District Court are 'successful' – that is, whether they achieve the result they sought (e.g. a certain amount of money, a judgment in their favour, a settlement on agreeable terms) – or whether they are unsuccessful (e.g. the matter was dismissed, a judgment in favour of the other side, a settlement for a marginal benefit). In a civil court, it is the parties that determine the extent to which the court is involved in finalising a claim and the court is not necessarily informed about outcomes that occur outside of the court process.

There are three possible points in time when a District Court civil claim could be considered finalised: the date of the *first* outcome; the date of the *final* outcome (for those claims that reopen or continue after the first outcome) or the date on which all activity related to the case completes, such as cross-claims and enforcement activity.

From an analytical perspective, the first of these is the easiest to capture and measure because it is a certain event: all claims will have a first finalisation. From a court user perspective, however, the first outcome is likely to be less relevant than the final outcome (except where the first outcome is the final outcome). For the court, the claim remains on record until all aspects of the case are finalised, although there may be no active intervention from the court towards the end of this time period if, for instance, it just concerns enforcement activity.

We focus here on identifying the first outcome (and in the next section on the date from lodgement to the first outcome), but note that the data could also allow subsequent outcomes to be identified and this may give a more accurate picture of the outcomes achieved for the parties.

The court may consider the claim first finalised when:

- the substantive (claim-related) proceedings within a case have completed against all the named parties, whether by judgment in favour of the plaintiff, the case being dismissed and/or some or all the parties reaching settlement
- it is more likely than not that the case won't continue (e.g. a set number of days after a default judgment or consent orders)
- the plaintiff withdraws their claim with a notice of discontinuance filed against all defendants
- there has been no activity on the case for a specified time (active cases with no activity at all can be automatically classified as lapsed after 9 months)
- the case requires closing administratively, as it was opened in error (recorded as closed).

Definition and quality of data on claim outcomes

No one field on JusticeLink captures the outcome of a claim. Information relevant to identifying outcomes are captured in a number of data fields.⁴⁴

- finalising status (determined, lapsed or closed)
- order description (e.g. Judgment for monetary amount; Default judgment, Consent judgment; Dismissal; Dismissal by consent) and date of the order
- documentation filed was a notice of discontinuance (and the date it was filed)
- the date of first determination/finalisation of the claim proceeding.

Finalising status

Each proceeding has a first finalising status recorded on JusticeLink. This can be used to identify claims that have been designated as lapsed or closed. The remainder (determined) require information from other fields to identify their first outcome.

Order description

The order description field includes both procedural orders and final orders. Most cases have multiple orders (procedural and final). Many cases have multiple (possible) final orders. Multiple final orders may appear in the data when:

- there are multiple orders made on the same day in a single proceeding (e.g., dismissal and consent judgment for a monetary amount)
- there are multiple orders in a single proceeding, which may be entered on the system on different days (close together or far apart) which may relate to different aspects of the case
- a notice of discontinuance is filed before or after another final order
- one or more orders are overturned at a later point in time by another order (e.g. default judgment followed by a later dismissal; or consent judgment for which terms of settlement were not filed within the required 14 days and the case was then dismissed)
- there are separate proceedings within a case, with final type outcomes on different dates
- there are different orders for different defendants to the claim.

The utility of the field to identify finalisation is further limited by the fact that values or categories within this field include those which:

- are not mutually exclusive (e.g., the category 'Dismissal' has been used to refer to matters dismissed as part of a consent judgment and other dismissals, even though there exists the more specific category of 'Dismissal by consent')
- are not consistently applied (as above)
- are, in some cases, very broad (e.g. 'Order')

⁴⁴There is also a field that captures the outcome type (Administrative Outcome; Listing event; Chamber Outcome), but we did not use this in our analysis to identify the outcome of the claim.

- could refer to either a procedural order or a final order (e.g. 'Consent order') – making it difficult to separate procedural and final orders.⁴⁵

Notices of discontinuance

The withdrawal of a claim is done by the plaintiff(s) via a notice of discontinuance naming the relevant defendants. A claim may have both an order outcome event and a notice of discontinuance. The reason for discontinuing a claim is not necessarily disclosed to the court and is not captured on JusticeLink.

The first determined date

In theory it should be possible to identify the first outcome by matching the date captured in JusticeLink as the *first determined date* to the date of an outcome event. However, we found that in a large proportion of claims this date did not match any outcome type event. It was therefore not clear to us, from the data provided, what event had triggered the setting of the first determined date on JusticeLink.

Recognising that there can be delays between events and their recording in JusticeLink, we extended the matching period to 30 days either side of the first determined date.⁴⁶ We reviewed a sample of those claims for which we still had no outcome type event within 30 days of the first determined date, and examples included:

- the first determined date was the date of a cost order (or some undefined order), but the judgment preceded this by perhaps a month or more – and was perhaps adjourned, e.g. to determine costs
- a case closed in error (first determined date), that had to be reopened to allow a consent judgment to be entered
- a case where the first determined date was the date on which the defence was filed (possible because doing so was a term of the settlement agreed between the parties)
- a notice of discontinuance e-filed in May was recorded on JusticeLink, and the case finalised, in September
- a case with two proceedings for what appeared to be one claim had the outcome entered against the second proceeding only.

While these are all no doubt valid case progressions, not being able to match the first determined date to an outcome type event limits the extent to which the data can be used to describe how the case finalised.

The lack of a match to an outcome order is particularly problematic where it is unclear from the order description whether it is a final order or not, such as a consent order. These are used to progress a case and also recorded as a final order, but as cases are generally left open for a period following a consent order (because the parties need to draw up the terms), it is often not feasible to determine whether it is a procedural or final order by comparing the date of order to the first finalisation date.

⁴⁵ The use of a finalising flag to distinguish between procedural and outcome orders would assist here.

⁴⁶ We first extended to 3, then 7, then 14 and then 30 days to achieve a reasonable match.

Adding to the problems of assigning one outcome to a case when reporting data are that:

- there may be multiple outcome type orders made on the same date (e.g. dismissal and consent judgment)
- there may be multiple orders in a single proceeding, which may be entered on the system on different days (close together or far apart) which may relate to different aspects of the case
- notices of discontinuance can be filed before or after another final order
- a plaintiff may discontinue their claim against one defendant but not another, or a case against one defendant may be dismissed but not another
- there may be different orders made against different defendants.

The complexity of analysing this data is recognised by the District Court:

Comparing registrations and finalisations is not an exact science. For example, a matter in the course of its life may, for various reasons, be registered more than once. Multiple parties and cross actions can further affect the equation. Cases determined at arbitration can be re-heard. A matter previously dismissed can be restored or a retrial may be ordered. Registries also conduct stocktakes of cases on hand during the course of the year, with pending statistics being adjusted as necessary.⁴⁷

Data related to outcomes

Given these complexities, we have had to make various assumptions to identify a likely case outcome, so the findings presented here should be taken as indicative only. For instance, our approach does not attempt to link orders and notices to individual plaintiffs and defendants. In theory this is possible to do from the data, but further work is required to determine how reliable this would be.⁴⁸

Lapsed and closed

Lapsed and closed cases can be readily identified from the JusticeLink proceeding data. These should be discrete outcomes. Of the 6,327 claims recorded as finalised for the first time in 2015, 24 had been closed and 462 were described as *lapsed*. However, 7 of the latter had also been discontinued by the plaintiff⁴⁹ so have been coded as such here. Nearly all lapsed claims were *Mercantile law* claims that had not been listed. Noting the limitations of the *Mercantile law* claim categories, *Statutory obligation of debt recovery* claims were the most likely to lapse, whether listed or not (40.0% did so) (Table A10, Appendix 2) perhaps because the parties had settled outside of the court process.

⁴⁷ District Court of New South Wales *Annual Review*, 2015, p. 22.

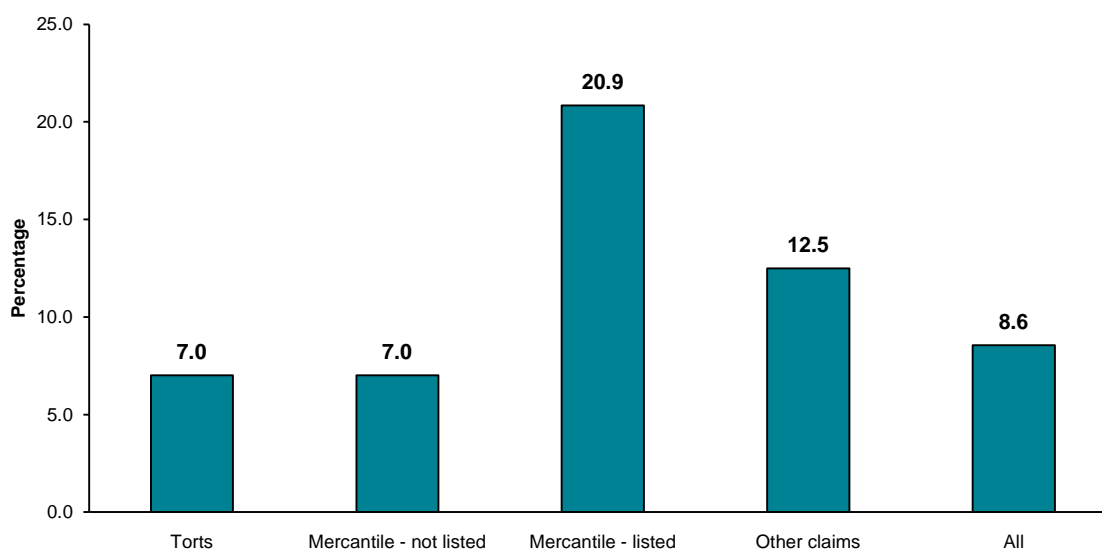
⁴⁸ For instance, of the 541 claims for which a discontinuance notice was filed within 30 days of the finalisation date, 22 may not have covered all the defendants to the claim (so the claim may have finalised in some other way). However, 57 claims had more discontinuance notices than defendants (perhaps due to multiple plaintiffs).

⁴⁹ Parties may have a settlement agreement to formally discontinue, although this is not a legal requirement.

Notices of discontinuance

Discontinued or withdrawn claims can be identified by whether any plaintiffs filed a notice of discontinuance on all the defendants – ideally on or close to the finalisation date. We noted from our casefile analysis that there was considerable variation in the dates of discontinuance notices relative to the first finalisation date.⁵⁰ We have assumed here that it is likely the plaintiff(s) withdrew their claim if they filed one or more discontinuance notices within 30 days either side of the first finalisation date.⁵¹ Overall, *Mercantile law – listed* claims were most likely to have such a notice (Figure 7).

Figure 7: Percentage of claims in which a notice of discontinuance was filed within 30 days of the first finalisation date



Serving a notice of discontinuance does not necessarily mean that the plaintiff has given up on their claim. It may be that the parties have settled so there is no need to continue with a court action.⁵² However, this can't be identified in the data we were provided with as in only a very small number of discontinued cases (< 4%) was there some evidence of consent or settlement, such as a consent judgment or consent order (which we classify below as consent/settlement) or a dismissal by consent. It may be that this information is provided to the court but entered onto JusticeLink in some other way, such as the receipt of documents in the ROP.

Orders

The nature of the outcome for claims that do not lapse, close or get discontinued should in theory be identifiable from the final orders – that is, those recorded on or close to the date that the claim was finalised in JusticeLink. Our review of casefiles suggested that the relevant outcome order might have a date up to 30 days (either side) of the first finalisation date recorded on JusticeLink. However, not all cases had a final order type within 30 days

⁵⁰ Defendants may request a notice of discontinuance to be filed sometime after the finalisation of the case, if required to cancel the impact of the original claim on their credit rating

⁵¹ This approach may result in a small overestimate of discontinued cases, as 22 of the 541 fewer notices were filed than there were defendants

⁵² Consent to discontinue is required in many matters.

and others had more than one. Where a case had more than one final order within the 30 days, we prioritised orders relating to judgments, then those relating to consent or settlement, then other types of order. Also, as cases can be determined by way of an order and can be actively discontinued by the plaintiff (particularly where the parties are settling) we prioritised judgments (including orders relating to consent or settlement), over discontinuance as an outcome.

Our findings on 'first' outcomes

Our aim was to identify from the JusticeLink data that we were provided with, the most likely *first* final outcome event for each claim. Where claims had several outcomes, we had to select one for the purpose of this analysis. We selected from the various types of outcomes in the following decreasing order of priority with orders within 30 days of the first finalisation date that involved judgment or consent taking the highest priority:

- a judgment of some kind following trial
- consent judgment or settlement with at least one defendant
- an order for dismissal, including by consent (so if the case was dismissed, but there was evidence of settlement, then consent takes priority)
- an order to discontinue or a notice of discontinuance filed by the plaintiff against at least one defendant – within 30 days of the first finalisation date
- a default judgment against at least one of the defendants (so if the default judgment was followed by a later order or notice of a type listed above, then the above take priority)
- case lapsed or closed
- an unspecified order: 'order'
- the case was transferred out or put on the inactive list
- none of the above, but there was some other non-finalising activity, such as a cost order or interim order
- there was no information on orders or other outcomes (see Case Study 2).

Using this strategy we were able to allocate an outcome for nearly all claims, with just 7% having no clear outcome, either because there was no information at all (1.2%), the only orders were not final ones (3.1%), or the only information was that they had received an 'Order' (2.7%).

CASE STUDY 2: JusticeLink claim type: Applications under Specific Commonwealth Acts – Taxation Administration Act 1953

The defendant in this case was the director of a company which was alleged to have withheld tax. The plaintiff (the Australian Tax Office) brought the case to the District Court to recover the tax debts owed by the defendant. The matter was lodged in 2010 via a statement of claim, but was not served on the defendant until 2011. The matter remained open until the end of the financial year in 2015, when the case status changed to 'determined'. No final outcome for the case was recorded on JusticeLink.

We checked the validity of our approach against a sample management information report provided by the court for 431 cases finalised in April 2015. Of these, only two-thirds had been assigned an outcome (the remainder were categorised as closed). Of those that had been assigned an outcome (n=286), we had allocated the same outcome in all but 5 cases.⁵³ We also assessed the validity of our approach against our casefile samples. While our approach is certainly not perfect, it is our assessment that it does give a reasonably good indication of the main ways in which District Court claims finalise.⁵⁴

Nearly three-quarters (73.2%) of *Torts* claims were finalised by consent judgment or by way of settlement/consent orders. A further 14.4% were discontinued by the plaintiff(s) or dismissed by consent (and some of these may have involved some externally arranged settlement). About 2.5% were resolved in favour of the plaintiff(s) at trial (although this may be an underestimate if some of the generic orders were also in favour of the plaintiff); and 4.2% of claims were dismissed (Table 32).

⁵³ Two cases were lapsed in the MI report which we had assigned to default or no information. 2 of our consent/settlement cases were assigned to discontinued/dismissed in the MI report; and 1 claim we had as discontinued was assigned to default judgment in the MI report. Other differences were due to groupings into outcomes. For instance, the MI report classified 'dismissed by consent' as 'dismissed', whereas we classified it as 'withdrawn'.

⁵⁴ Although in theory these claims all finalised for the first time in 2015, and we prioritised orders and discontinuance notices within 30 days of the first finalisation date, our approach had about 4% of claims finalising prior to 2015 and 1% after 2015. Some of the claims we classified as finalising prior to 2015 may have had ongoing claims against another defendant.

Table 32: Outcomes of District Court claims

	Torts	Mercantile	Other	All
	N=4,047	N=2,000	N=280	N=6,327
	%	%	%	%
Judgment following trial	2.5	3.1	4.6	2.8
Consent/settlement	73.2	6.5	28.9	50.2
Discontinued or dismissed by consent	14.4	20.3	25.0	16.7
Dismissed	4.2	6.1	22.1	5.6
Default judgment	0.1	31.4	4.6	10.2
Lapsed	0.0	22.4	1.8	7.2
Closed	0.3	0.4	1.4	0.4
Generic orders	3.0	1.9	3.9	2.7
No finalising order/outcome #	2.2	8.2	7.5	4.3
All outcomes	100.0	100.0	100.0	100.0

Source: JusticeLink data on District Court claim proceedings, orders made, notices of discontinuance and first finalised status. See text for method of allocation to outcome type.

These are mainly those with an interim order or no order at all but also include a small number of claims that were transferred out, or to the inactive list

Table 33 splits *Mercantile law* claims into those that were originally listed and those that were not, and as expected the latter were much more likely to lapse (31.4%), compared to just 0.7% of those that were listed. Not listed *Mercantile law* claims were also more likely to finalise with a default judgment (43.3%) compared to 2.9% of *Mercantile law – listed* claims. Overall a fifth (20.3%) were withdrawn by the plaintiff(s) or dismissed by consent. A recorded settlement or consent arrangement was much less common for *Mercantile law* claims than *Torts* (6.5% of claims).

Table 33: Outcomes for listed and not listed District Court Mercantile law claims

	Mercantile – not listed	Mercantile – listed	Mercantile – all
	N=1,410	N=590	N=2,000
	%	%	%
Judgment following trial	1.0	8.0	3.1
Consent/settlement	2.2	16.8	6.5
Discontinued or dismissed by consent	10.3	44.1	20.3
Dismissed	2.7	14.1	6.1
Default judgment	43.3	2.9	31.4
Lapsed	31.4	0.7	22.4
Closed	0.4	0.5	0.4
Generic orders	0.3	5.6	1.9
No finalising order/outcome	8.4	7.5	8.2
All outcomes	100.0	100.0	100.0

Source: JusticeLink data on District Court claims with a first finalisation date in 2015.

Improving information about outcomes

As discussed in the introduction to this section, the allocation of an outcome to a District Court case is no simple matter. For analytical purposes, the capture of the first final type outcome event should be feasible, and gives one picture of outcomes, though not the full picture from the perspective of the courts or court users. However, even this wasn't straightforward as it wasn't clear from the data we were provided with how JusticeLink first finalisation/determination dates are triggered as they often did not match any outcome event.

Additional information on outcomes achieved for the parties could also be obtained by requiring the plaintiff to provide a reason for filing a notice of discontinuance. This would help to distinguish between cases that are withdrawn through the parties settling and those withdrawn for other reasons.

Given the interest in how claims resolve, there would be merit in exploring whether it would be feasible to develop a small set of mutually exclusive outcomes, from which the most appropriate could be selected on each occasion that a case is determined/finalised in JusticeLink. Noting that multiple outcomes are permissible, such as consent and discontinuance, we suggest a similar prioritisation approach to the one we have adopted here. However, we recognise that this is far easier to propose than it may be to apply in practice, given the complexities in case resolution that we have identified.

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

Other than monetary claims, JusticeLink does not capture the specifics of the award sought, although it can occasionally be identified from the nature of the claim, such as an appeal to overturn a previous decision. However, most claims are for monetary amounts, be they damages for a tort suffered or compensation for a breach of contract.

To assess the extent to which claim awards are in line with monetary jurisdiction of the court, and to assess the extent to which plaintiffs' expectations are met in practice, we attempted to compare the amount of the original claim to the size of the award.

Definition and quality of data on monetary amounts

As discussed in Section 2, not all claims seek or specify the monetary amount sought and if they do, this is not always transferred onto JusticeLink, or transferred correctly.⁵⁵ In many cases the size of the award made was not available on the casefiles, so it was not feasible to assess the accuracy with which the award had been entered onto JusticeLink. The findings presented here are therefore only indicative.

Information on monetary awards held on JusticeLink includes:

- the date of the relevant order
- the order identifier number (ID)
- judgment amount (and currency)
- whether it was a default judgment
- whether costs were agreed
- the enforcement amount.

Within one JusticeLink proceeding there can be multiple orders (we found up to 11 monetary orders for one claim). A review of a sample of casefiles indicated these were usually either awards to separate plaintiffs, against separate defendants, or awards for different purposes (such as an award of land separate from an award of damages) or an award and interest stated separately (although in at least one of our casefiles sample separate orders were recorded for the award and the award plus interest). To assess the award amount we therefore combined multiple awards within a case, but we note that this may sometimes overestimate the total award.

Ideally, we would also analyse the value of monetary awards by whether the claim was liquidated or unliquidated. However, without this variable in the data provided, we have

⁵⁵ The indication from the casefiles we reviewed is that this is less of an issue for e-filed than hardcopy registry filed claims.

examined the data by listed or not listed. Not listed claims will only include liquidated amounts, while listed claims will include unliquidated and defended liquidated claims.

Monetary value of awards made

Overall, 60.4% of claims resulted in a monetary award being recorded on JusticeLink, ranging from 27.5% of our *Other* claim type, to 70.4% of *Torts* claims. Within *Torts* a third of claims had an award of less than \$100,000 recorded and 3.4% an award of more than \$750,000 (Figure 8). *Mercantile law – not listed* cases were more likely to have an award recorded than listed ones, reflecting the high proportion of default judgments in these types of case.

Figure 8: Award amount by the type of claim for District Court claims

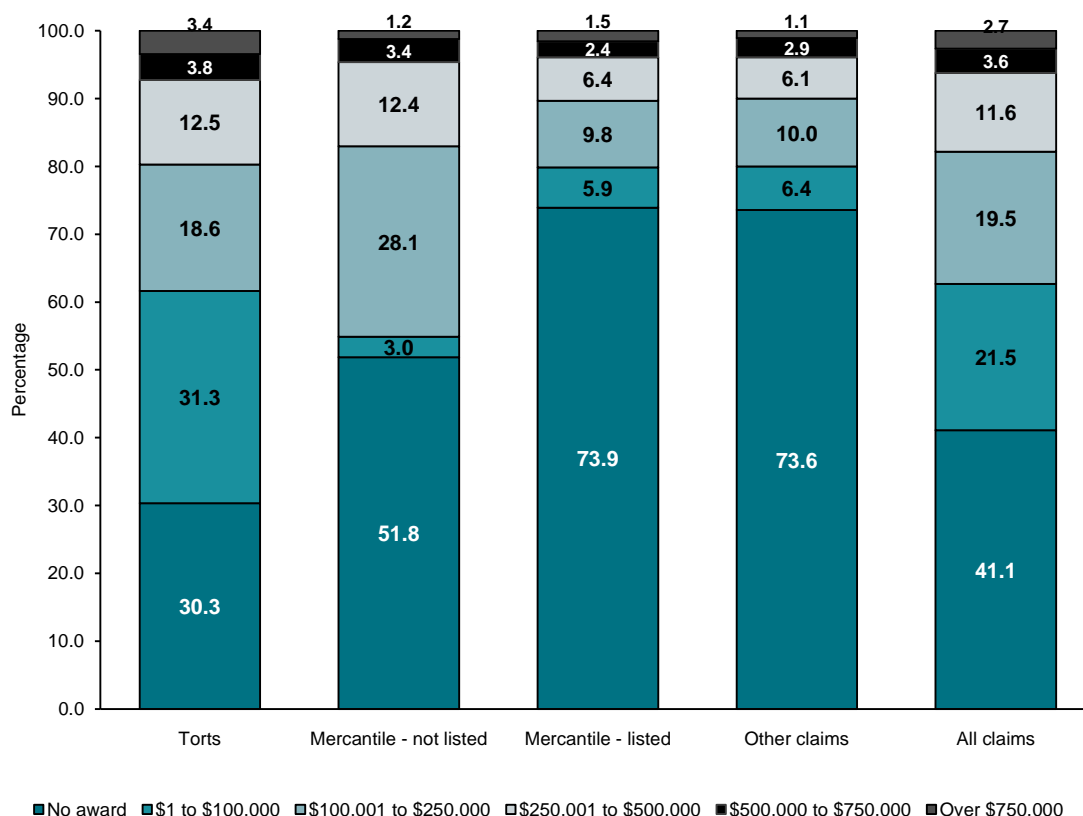


Table 34 shows the amount of monetary award recorded by the finalisation outcome that we allocated the case. As would be expected, lapsed and closed cases have no monetary award recorded, as do nearly all of those withdrawn/discontinued or dismissed.⁵⁶

Where there was an award recorded, those made by judgment following trial were more likely than those that settled by consent to include the larger monetary amounts: overall

⁵⁶ A review of a sample of withdrawn/discontinued or dismissed cases that had a monetary award indicated these were cases with multiple outcomes. For instance: default judgment followed by discontinuance or dismissal by consent (we assigned to discontinued on the basis of JusticeLink’s first finalisation date) and default judgment that was set aside, then dismissed, or case was dismissed then there was a consent judgment (we assigned to dismissed on basis of JusticeLink’s first finalisation date). In theory it should be possible to match orders to the amount of the order and get a more precise match, but this was not feasible within the timescale of this project.

23.4% of these were recorded as being for more than \$500,000, compared to 9.0% of those settling by consent. However, the latter may be affected by the information provided to the courts by those settling privately. In practice, the vast majority of the largest awards (over \$750,000) recorded by the court are by settlement/consent (78.0% of those recorded) with just 12.5% awards by judgment following trial and 9.5% default judgments.

Table 34: Amount of award by type of outcome

		No award on JusticeLink	\$1 to \$100k	> \$100k to \$250k	> \$250k to \$500k	> \$500k to \$750k	> \$750k
	N	%	%	%	%	%	%
Judgment following trial	175	6.9	21.1	28.0	20.6	11.4	12.0
Consent judgment	3,174	9.4	40.3	24.6	16.7	4.9	4.1
Withdrawn, discontinued, dismissed by consent	1,058	97.9	0.3	1.1	0.7	0.0	0.0
Dismissed	354	96.6	1.1	1.4	0.8	0.0	0.0
Default judgment	646	0.5	6.0	58.7	24.6	7.7	2.5
Lapsed	453	100.0	0.0	0.0	0.0	0.0	0.0
Closed	24	100.0	0.0	0.0	0.0	0.0	0.0
Generic orders	171	100.0	0.0	0.0	0.0	0.0	0.0
No final type outcome	272	96.7	0.4	2.9	0.0	0.0	0.0
All outcomes	6,327	41.1	21.5	19.5	11.6	3.6	2.7

Source: JusticeLink data on District Court claims recorded as finalised in 2015.

Note: Judgments of the plaintiff with no award include Appeals, Set aside of decisions from the Children's Court, and judgments as to liability only. The one default judgment with no monetary award was a judgment as to liability only. For an explanation of withdrawn/discontinued and dismissed cases with a claim amount see footnote 36.

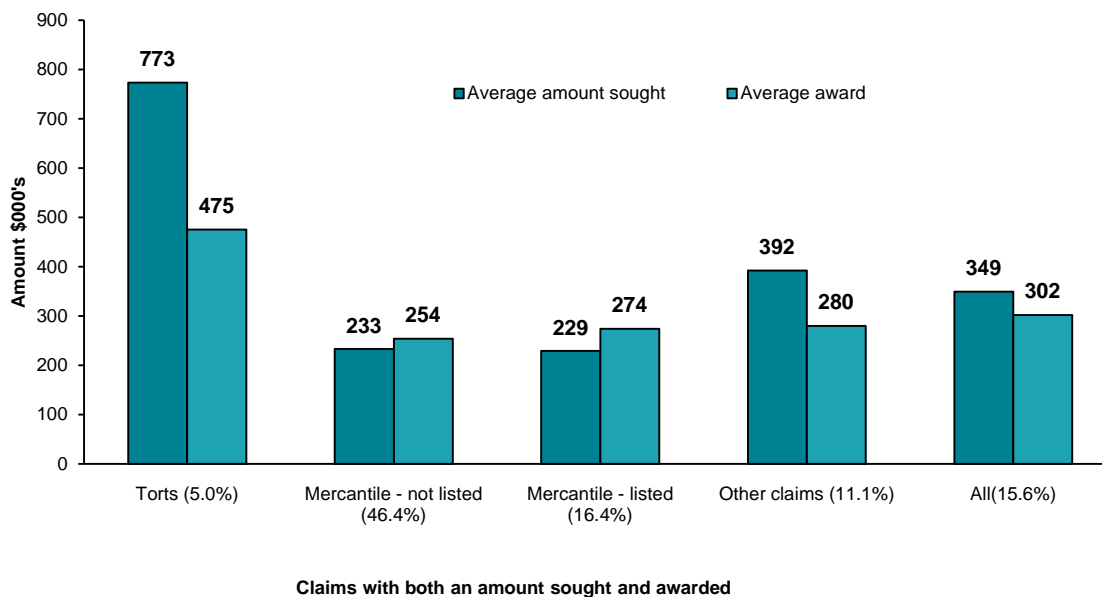
Comparing awards made to awards sought

Comparing awards made to awards sought is limited by the information recorded on JusticeLink. Most *Torts* claims are unliquidated (therefore not specifying an amount sought) and we identified from our casefile analysis an undercount of *Mercantile law – listed* cases with a specified claim amount on JusticeLink.

Making comparisons within claim type is limited by the absolute number of claims for which both an amount sought and an amount awarded are recorded on JusticeLink. Figure 9 compares average awards sought to average awards made for those 15.6% claims where JusticeLink had both amounts as greater than zero. Overall, awards were slightly lower on average than the amount sought (\$302,000 vs \$348,900), and this was most evidently the case for the 5.0% of *Torts* where there was information on both the amount sought and the award: the amount sought was an average of \$773,000 and the average award was \$475,000.⁵⁷

⁵⁷ The higher average for *Mercantile law* cases may reflect an overestimate of the amounts awarded where award should not have been added together for some reason, such as the example we found of separate amounts for the award and the award + interest.

Figure 9: Average amount sought and average amount awarded for those claims where both amounts recorded on JusticeLink (percentage of all claims in brackets)



Combining all claim types and grouping the amounts sought and awarded, Table 35 shows that, broadly speaking, if an award is made and recorded, it is in the same ball park as the original claim. For instance, 37.8% of recorded claims that were for over \$250,000 resulted in an award that was for over \$250,000. This equates to 70.7% of claims in which there was an award of some amount, when those claims for which there was no award are excluded.

Table 35: Award amount by claim amount for District Court claims

	N	Missing/ no/zero award	\$1 to \$100k award	\$100k-\$250k award	Over \$250k award
		%	%	%	%
Missing/no/zero claim	4330	36.7	28.2	17.4	17.8
\$1 to \$100k claim	122	60.7	28.7	9.0	1.6
\$100k to \$250k claim	1032	52.9	3.5	39.9	3.7
Over \$250k claim	843	46.5	8.5	7.1	37.8

Source: JusticeLink data on District Court claims recorded as first finalised in 2015.
 Note: Not all claim amounts and award amounts are recorded on JusticeLink.

10. How long do District Court claims take to finalise?

Information on how long claims 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 dealt with. However, in addition to court practices and procedures, the length of a case will be affected by the nature of the claim and the activities of the parties, among other factors.

We consider here only the time taken from the lodgement of a claim to the first outcome (as discussed in Section 8), but note that activity on a case may continue beyond this if, for instance, enforcement proceedings are initiated.

Some District Court cases are rather unusual in that they include periods of inactivity, where the parties and the court must wait for factors beyond their control (e.g. for a child to reach an age where their function can be assessed for damages). There are therefore two potential measures of claim duration:

- elapsed time from lodgement date to claim finalisation
- active time where the case is live and the court actively involved in its management.

Definition and quality of data on claim duration

As previously described, the data provided was for all claims that were recorded as finalising for the first time during 2015. All claims, therefore, had a 2015 finalisation date which we have used to compare to the date that the claim was originally lodged. However, as previously discussed, the apparent outcome could have a date before or, occasionally, after the date of finalisation recorded on JusticeLink. Further investigation is required, therefore, to determine whether the use of an alternative date would give a more accurate profile of case length.

In terms of periods of inactivity, this might be assessed through the order to refer to the inactive list and restore to active list. In total, 251 of the claims had at least one referral to the inactive list and 19 a direction to restore, with 265 having one or other or both. A review of these claims indicated repeated referral to the inactive list without an intervening order to restore to the active list. This may be due to inactive cases being reviewed and returned to the inactive list. As this wasn't entirely clear from the data we decided not to attempt to subtract the time between the two types of order from the elapsed duration of a claim. Further investigation is required to determine whether there is an alternative method to reliably exclude periods of inactivity from the elapsed time to finalisation.

Time to finalisation

Claims within the District Court vary considerably in their length. Some cases take many years to complete (11.6% took longer than two years and the longest claim we reviewed was 16.5 years). To understand the reasons behind this we reviewed casefiles for the longest matters. Many were *Personal injury motor vehicle* claims and *Personal injury other* claims involving children, where damages cannot be assessed until there is evidence regarding the lifelong impact (see Case study 3). However, these long cases, though clearly important, are not representative of most claims heard in the District Court as 88.4% are completed within two years and 58.0% within one year (Table A9, Appendix 2).

CASE STUDY 3: JusticeLink claim type: *Torts – negligence – motor vehicle accident*

This case involves a plaintiff (by their tutor) who was run over by their father in the driveway of the family home. The plaintiff suffered significant physical and cognitive injuries.

The case was lodged in 2001 via a statement of claim. In 2002, the case was placed on the inactive list. The status of the case was reviewed in 2004, 2005, 2007, 2008, 2011, 2012 and 2013. Orders were made at each review point for the case to remain on the inactive list (with various listing dates vacated throughout this period). In 2015, the particulars of the case were updated with medical cost assessments, and a consent order for mediation to occur was made. In May 2015 there was a consent judgment made in favour of the plaintiff.

The judgment amount was inclusive of funds management, clear of payments made by the insurer to date in accordance with s.45 *Motor Accidents Act 1988*, agreed expenses for treatment and travel incurred by the tutor in the period to date, an amount repayable to Medicare Australia in accordance with a valid Notice of Past Benefits, and any additional s.45 expenses reasonably incurred in the period up to the date of court approval.

Time to finalisation by claim type

On average, including the longest cases and periods of inactivity, District Court claims take just over a year to finalise (400 days, or 13 months) (Table 36). *Torts* claims take longer on average (430 days or 14 months) than *Mercantile law* claims (340 days or 11 months), in part because the not listed *Mercantile law* cases take less than 10 months to finalise on average (300 days).

Within *Torts* claims, the shorter cases on average were *Deceit/defamation/other wrongful acts* (340 days) and *Work injuries* (390 days), and the longest were *Professional negligence* (450 days). However, these averages mask a wide range of case duration (Table A9, Appendix 2). A quarter of *Personal injuries – motor vehicle*, for instance were finalised within 3 months, but another quarter took over 18 months and the longest case ran for 16.5 years.

Noting that the distinction between the *Mercantile law* categories is undermined by the over-use of the *Mercantile law – other* category, claims recorded as *Mercantile law – other* had the shortest average time to complete ((320 days) and the handful (n=10) recorded as statutory obligation of debt recovery had the longest (520 days, or 17 months).

Table 36: Average number of days from claim lodgement to first finalisation date for District Court claims first finalised in 2015, by whether they were listed

	Not listed	Listed	All
	N=1,446	N=4,881	N=6,327
	Days	Days	Days
Torts	na	430	430
Personal injuries – other	na	440	440
Personal injuries – motor vehicle	na	420	420
Professional negligence	na	450	450
Deceit/defamation/other wrongful acts	na	340	340
Wrongful acts against person/property/goods/land	na	410	410
Work injuries	na	390	390
Mercantile law	300	440	340
Mercantile law – other	290	410	320
Sale of goods and services	320	520	380
Consumer/insurance/financial and goods disputes	380	460	400
Building disputes	260	420	380
Partnership/Principal & Agent disputes	-	-	450
Statutory obligation of debt recovery	-	-	520
Other claim types	380	340	350
Applications under specific acts/laws	-	250	270
Workers compensation	-	470	460
Children, family and de facto relationships	na	240	240
Real property	350	490	430
Employment and workplace relations	-	340	370
Other types of claim (including equity)	na	400	400
Total	300	420	400

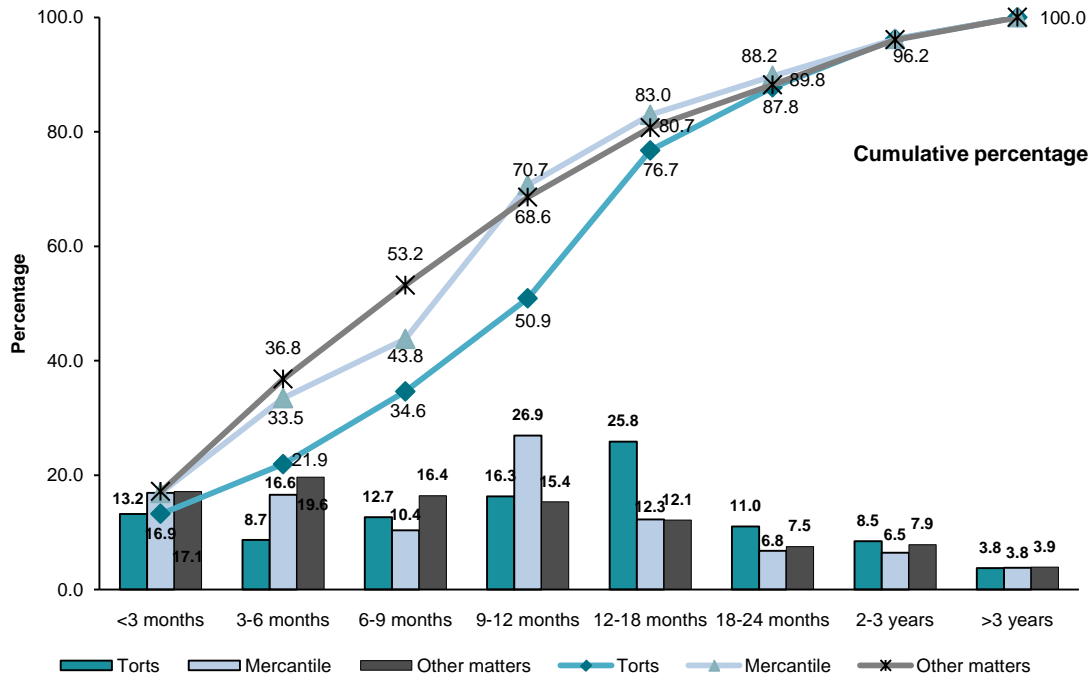
Source: JusticeLink data on District Court claims recorded as first finalised in 2015. Time elapsed is from lodgement of first proceeding to completion of case, for claim cases only.

Notes '-' indicates there were less than 10 claims of this type. Days rounded to nearest 10.

This analysis uses the claim type categories recorded on JusticeLink which are not always accurate (see Section 1).

Figure 10 shows the cumulative percentage of claims that had completed after a certain elapsed time. On average, 53.2% of claims other than *Torts* and *Mercantile law* completed within nine months, compared to 43.8% of *Mercantile law* claims and 34.6% of *Torts*. Only half the *Torts* cases had completed at the one year mark, compared to over two-thirds of other types of claim.

Figure 10: Time from claim lodgement to first case finalisation, for District Court claims recorded as finalising for the first time in 2015, by broad matter type



Excluding claims with inactive periods

Although we were unable to exclude periods of time while a case was inactive, it was possible to look at the duration of cases, excluding the 265 claims that had inactive period(s) (which by their nature also tend to be the longest cases). Not surprisingly, this had the greatest impact on *Torts* claims, reducing their average length from 430 to 370 days (Table 37). The average duration of all claims reduced from 400 days to 360 days. Given that this approach essentially assumes these cases were inactive throughout, the average active duration of a case will be somewhere between these two figures.

Table 37: Average duration of a claim in days for all claims, and those active throughout, by claim type

	All claims	Claims with no inactive period
	N=6,327	N=6,062
	Days	Days
Torts	430	370
Mercantile – not listed	300	300
Mercantile – listed	440	420
Other types of claim	350	330
All claims	400	360

Source: District Court JusticeLink data on claims recorded as finalised for the first time during 2015.

Time to finalisation by outcome

The quickest claims to finalise, other than matters that are closed administratively, are default judgments, averaging 130 days (4.3 months) from date of lodgement to first finalisation (Table 38). Longest were those resolved in favour of the plaintiff following a trial (averaging 560 days, or 18.4 months) – even longer for *Torts* claims (620 days or 20.4 months). Claims that resolved through some type of consent or settlement averaged 420 days (13.8 months). Those that were discontinued or dismissed averaged 360 days (11.8 months).

Table 38: Average days to outcome type, by broad claim type for District Court claims

	Torts	Mercantile – not listed	Mercantile – listed	Mercantile – all	Other claim types	All
	N=3,942	N=1,255	N=536	N=1,791	N=260	N=5,993
	Days	Days	Days	Days	Days	Days
Judgment following trial	620	260	580	500	370	560
Consent/settlement	420	250	500	430	420	420
Discontinued or dismissed by consent	380	240	420	350	280	360
Dismissed	350	320	460	410	290	360
Default judgment	-	130	160	130	-	130
Lapsed	-	280	-	280	-	280
Closed	30	-	-	-	-	30
Generic orders	520	-	460	430	400	490
No finalising order/outcome	390	740	240	610	270	510
All outcomes	420	250	430	300	320	380

Source: JusticeLink data on orders, discontinuance notices, finalisation status and first finalisation date for District Court claims recorded as first finalised in 2015 – 334 cases where the LJF assigned an outcome on the basis of an order prior to or after 2015 are excluded.

Note: ‘-’ indicates fewer than 10 cases had this outcome. Days rounded to nearest 10.

Other factors affecting time to finalisation

Initial analysis to identify the factors that have an influence on the length of a case was conducted only on the 1,000 claims we coded for entity type. This indicated that the broad nature of the claim, the type of plaintiff or defendant and whether or not they are represented have *no* impact on the time claims take – once other features of the claim are controlled for. Not particularly surprisingly, filing a defence significantly increases the time a claim case takes to finalise. Those where the claim is withdrawn/discontinued, there was a default judgment or the parties settle, were significantly quicker to resolve. However, the analysis suggests that factors other than those tested here are the main determinant of case length.⁵⁸

Improving information on claim duration

To measure the time a case is under the active supervision of the court, good information regarding the dates that claims move to and from the inactive list is required. The lack of information on claims moving back on to the active lists suggests that this may not be currently available. Further investigation is also required to determine whether the use of an alternative finalisation date would give a more accurate profile of case length – given the lack of clear outcome on the currently specified date of first finalisation for some claims. Also requiring further exploration is the extent to which those factors outside of the court which may affect the length of cases, such as time taken by the parties to progress their own matters, can be assessed from court data.

⁵⁸ Exploratory multiple regression analysis was conducted on the variables referenced. Together these explained about 14% of the variance in the time from lodgement to finalisation for the 999 claims cases included in the analysis.

Appendix 1: Methodology

A number of different sources of data were used in the analysis for this report. There were:

1. Data on all civil claims finalised for the first time during 2015. This was provided by NSW Court Service from data tables they extract from JusticeLink, the NSW Courts management information system
2. A sample of 1,000 claims cases randomly selected from 1 above. This was to provide a sample of cases to code entity types
3. Summary information held in a regular management information report for all cases finalised in April 2015 (for the first time or not)
4. A sample of claims for five separate samples drawn from 3 above. These samples provided the basis for the casefile analysis described below.

JusticeLink data tables

The data provided was of proceedings finalising for the first time in 2015. This differed from the Local Court extract which was for proceedings relating to cases finalising for the first time in 2015. The District Court extract may therefore include a small number of claims for cases that did not finalise during 2015 due to other ongoing proceedings.

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

We were provided with information on 9,302 proceedings, which related to 7,377 cases. Of these, 6,360 claim proceedings related to 6,327 cases (due to a small number of duplicate claims proceedings within one case).

Table M1: District Court proceedings for cases finalising for the first time in 2015

	Number of proceedings
Claims	6,360
Cross-claims	663
Certificates	168
Notice of motion	2,104
Generic proceedings/criminal	7
All	9,302

Source: District Court JusticeLink data for all proceedings of cases recorded as first finalised in 2015.

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

A separate dataset including all plaintiffs and defendants was constructed for entity-based analysis. This deleted duplicate records for entities where these related to an additional legal representative being associated with the entity. Whether or not an entity had legal representation was assumed if there were any details entered for a legal representative for that entity (whenever this had occurred).

A number of new variables were constructed for the purpose of analysis and reporting from the existing fields. For instance, law types were grouped reducing the full list provided from 79 to 20.

Sample of 1,000 cases

For the purpose of coding entities into their types, a random sample of 1,000 claims cases was drawn from the JusticeLink data. Coding was undertaken separately on plaintiffs and defendants. An initial set of 26 codes was collapsed into summarised lists of 23 categories and 6 broad categories for reporting purposes.

District Court management information (MI) report

District Court senior staff are provided with regular (monthly) reports on the business of the court for monitoring purposes. These relate to cases commenced and cases finalised during the relevant month. A copy of the latter report for April 2015 was provided to the Foundation. The report contains summary information relating to cases, including a final outcome type.

Casefile samples

A casefile analysis (paper and e-file attachments as required) was undertaken of 324 casefiles, to investigate any systematic limitations in the data recorded on JusticeLink relevant to the key questions addressed. Key data points examined and recorded on an Access database were:

- the status of the plaintiff(s) and defendant(s) as 'organisations' or 'individuals'
- the representation status of the parties at different points in the process
- the nature of the claim and the types of claims included within the *Mercantile law – other* category
- information on claims and outcomes, including claim details, amounts, interest, solicitor fees and court costs
- notes of further actions following judgment/after case closure.

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

The following samples were used:

- 95 claims recorded as *Mercantile law – other*
- 133 of the longest cases in the data

- 96 in 12 purposive samples to explore particular issues in the data such as quality of data on the types of claim recorded, legal representation and to understanding the sequencing of events, particularly regarding outcomes

The research team were provided access to a JusticeLink terminal at the court complex. Where necessary, documents (e.g. statements of claim, including pleadings and particulars, and defence documents) not accessible on JusticeLink were requested and reviewed in hardcopy.

Appendix 2: Tables

Table A1: Lodgement type by claim type, claims finalised in the District Court 2015

	N	E-filed	Registry
		N=1,123	N=5,204
		%	%
Torts	4,047	4.8	95.2
Personal injuries – other	2,087	4.8	95.2
Personal injuries motor vehicle	1,157	3.1	96.9
Professional negligence	353	3.4	96.6
Deceit/defamation/other wrongful acts	206	16.5	83.5
Wrongful acts against person/property/goods/land	125	5.6	94.4
Work injuries	119	4.2	95.8
Mercantile law	2,000	44.9	55.1
Mercantile law – other	1,463	50.9	49.1
Sale of goods and services	248	37.9	62.1
Consumer/insurance/financial and goods disputes	182	21.4	78.6
Building disputes	86	18.6	81.4
Partnership/Principal & Agent disputes	11	27.3	72.7
Statutory obligation of debt recovery	10	10.0	90.0
Other matters	280	11.1	88.9
Applications under specific acts/laws	81	9.9	90.1
Workers compensation	65	3.1	96.9
Children, family and de facto relationships	56	5.4	94.6
Real property	53	24.5	75.5
Employment and workplace relations	13	30.8	69.2
Other types of claim (including equity)	12	8.3	91.7
Total	6,327	17.7	82.3

Source: District Court JusticeLink data on claims recorded as finalised for the first time in 2015.

Notes: This analysis uses the claim type categories recorded on JusticeLink which is not always accurate (see Section 1).

^ Some of the claim type categories have been collapsed for reporting purposes.

Table A2: Types of claims (listed and not listed claims) finalised in the District Court, 2015

Claim type [^]	Not listed	Listed	All claims
	N=1,446	N=4,881	N=6,327
	%	%	%
Torts	0.0	82.9	64.0
Personal injuries – other	0.0	42.8	33.0
Personal injuries motor vehicle	0.0	23.7	18.3
Professional negligence	0.0	7.2	5.6
Deceit/defamation/other wrongful acts	0.0	4.2	3.3
Wrongful acts against person/property/goods/land	0.0	2.6	2.0
Work injuries	0.0	2.4	1.9
Mercantile law	97.5	12.1	31.6
Mercantile law – other	74.6	7.9	23.1
Sale of goods and services	11.8	1.6	3.9
Consumer/insurance/financial and goods disputes	9.0	1.1	2.9
Building disputes	1.5	1.3	1.4
Partnership/Principal & Agent disputes	0.3	0.1	0.2
Statutory obligation of debt recovery	0.5	0.1	0.2
Other claim types	2.5	5.0	4.4
Applications under specific acts/laws	0.4	1.5	1.3
Workers compensation	0.2	1.3	1.0
Children, family and de facto relationships	0.0	1.1	0.9
Real property	1.7	0.6	0.8
Employment and workplace relations	0.1	0.2	0.2
Other types of claim (including equity)	0.0	0.2	0.2
Total	100.0	100.0	100.0

Source: District Court JusticeLink data on claims recorded as finalised for the first time in 2015.

Notes This analysis uses the claim type categories recorded on JusticeLink which are not always accurate (see Section 1).

[^] Some of the claim type categories have been collapsed for reporting purposes.

Table A3: Amount of District Court claim specified at time of filing

	\$1– \$100,000	\$100,000 1 to \$250,000	\$250,000 1 to \$500,000	\$500,000 0 to \$750,000	Over \$750,000	No amount specifie d	N
	%	%	%	%	%	%	
Torts	0.3	0.1	0.1	6.3	0.3	93.0	4,047
Personal injuries – other	0.3	0.1	0.0	6.1	0.0	93.4	2087
Personal injuries motor vehicle	0.3	0.1	0.1	5.4	0.8	93.3	1157
Professional negligence	0.3	0.0	0.0	9.9	0.3	89.5	353
Deceit/defamation/other wrongful acts	0.5	0.5	0.5	1.9	0.0	96.6	206
Wrongful acts against person/property/goods/lan	0.8	0.0	0.8	6.4	0.0	92.0	125
Work injuries	0.0	0.0	0.0	12.6	0.8	86.6	119
Mercantile law	5.0	50.0	20.3	7.0	0.2	17.6	2,000
Mercantile law – other	3.9	50.0	21.9	7.9	0.1	16.1	1463
Sale of goods and services	13.7	58.5	16.5	2.4	0.4	8.5	248
Consumer/insurance/financial and goods	3.3	50.0	20.3	4.4	0.0	22.0	182
Building disputes	1.2	27.9	3.5	9.3	0.0	58.1	86
Partnership/Principal & Agent disputes	9.1	45.5	9.1	0.0	0.0	36.4	11
Statutory obligation of debt recovery	10.0	30.0	30.0	20.0	0.0	10.0	10
Other claim types	3.2	10.4	3.9	5.0	0.4	77.1	280
Applications under specific acts/laws	2.5	3.7	4.9	2.5	0.0	86.4	81
Workers compensation	0.0	4.6	3.1	12.3	0.0	80.0	65
Children, family and de facto relationships	0.0	0.0	0.0	0.0	0.0	100.0	56
Real property	11.3	39.6	9.4	5.7	1.9	32.1	53
Employment and workplace relations	7.7	15.4	0.0	7.7	0.0	69.2	13
Other types of claim (including equity)	0.0	0.0	0.0	0.0	0.0	100.0	12
Total	1.9	16.3	6.6	6.4	0.3	68.4	6,327

Source: JusticeLink District Court claim proceedings finalised for the first time in 2015.

Note: This analysis uses the claim type categories recorded on JusticeLink which is not always accurate (see Section1).

Table A4: Number of plaintiffs and defendants in District Court claims, by claim type

	Plaintiffs			Defendants		
	One	Two	Three +	One	Two	Three+
	%	%	%	%	%	%
Torts						
Personal injuries – other	99.0	0.7	0.3	73.0	18.9	8.2
Personal injuries motor vehicle	99.2	0.5	0.3	89.1	9.5	1.5
Professional negligence	93.2	4.8	2.0	73.4	19.8	6.8
Deceit/defamation/other wrongful acts	95.1	4.4	0.5	78.6	15.5	5.8
Wrongful acts against person/property/goods/land	91.2	7.2	1.6	81.5	11.3	7.3
Work injuries	100.0	0.0	0.0	83.2	13.4	3.4
Mercantile law						
Mercantile law – other	92.2	6.4	1.5	74.9	17.7	7.4
Sale of goods and services	94.0	4.8	1.2	56.7	30.0	13.4
Consumer/insurance/financial and goods disputes	95.1	4.4	0.5	58.1	32.4	9.5
Building disputes	87.2	11.6	1.2	70.2	19.0	10.7
Partnership/Principal & Agent disputes	100.0	0.0	0.0	54.5	45.5	0.0
Statutory obligation of debt recovery	100.0	0.0	0.0	100.0	0.0	0.0
Other claim types						
Applications under specific acts/laws	84.0	11.1	4.9	77.2	12.7	10.1
Workers compensation	98.5	1.5	0.0	89.1	10.9	0.0
Children, family and de facto relationships	91.1	8.9	0.0	25.0	12.5	62.5
Real property	69.8	20.8	9.4	39.6	39.6	20.8
Employment and workplace relations	92.3	7.7	0.0	76.9	23.1	0.0
Other types of claim (including equity)	83.3	16.7	0.0	90.0	0.0	10.0
Total	95.9	3.3	0.9	75.4	17.3	7.3

Source: District Court JusticeLink data on claim proceedings finalised for the first time in 2015.

Note: This analysis uses the claim type categories recorded on JusticeLink which are not always accurate (see Section 1).

Table A5: JusticeLink plaintiff and defendant types, by claim type, in claims finalised in the NSW District Court, 2015

	N	Individual		Organisation	
		Non-corporate %	Corporate %	Corporate %	Non-corporate %
Torts					
Plaintiff	4,022	96.9	0.4	2.7	0.1
Defendant	5,309	32.8	10.4	55.3	1.6
Mercantile law					
Plaintiff	565	25.3	0.8	47.8	26.1
Defendant	2,880	70.0	0.8	28.8	0.4
Other claim types					
Plaintiff	215	64.8	0.6	33.4	1.2
Defendant	484	53.3	2.3	41.1	3.3
All					
Plaintiff	6,721	71.4	0.5	19.2	8.8
Defendant	8,673	46.3	6.8	45.7	1.3

Source: District Court JusticeLink data for all plaintiffs and defendants involved in claims that were recorded as finalised for the first time in 2015.

Table A6: JusticeLink and Foundation entity types by lodgement method

LJF entity type	JusticeLink 'Individual'		JusticeLink 'Organisation'	
	E-filed %	Filed at registry %	E-filed %	Filed at registry %
Plaintiffs	N=42	N=670	N=165	N=123
Individual	92.9	97.9	0.6	1.6
Organisation	7.1	2.1	99.4	98.4
All Plaintiffs	100.0	100.0	100.0	100.0
Defendants	N=159	N=345	N=47	N=440
Individual	97.5	90.1	0	0.5
Organisation	2.5	9.9	100	99.5
All Defendants	100.0	100.0	100.0	100.0

Source: District Court JusticeLink data for all plaintiffs and defendants involved in claims that were recorded as finalised for the first time in 2015.

Table A7: Type of claim brought by plaintiff type, claims finalised in the District Court, 2015

	Individual	Individual by tutor	Government [^]	Business	Other
	N=617	N=81	N=113	N=175	N=14
	%	%	%	%	%
Torts	85.6	97.5	0.0	6.9	35.7
Personal injuries	48.0	19.8	0.0	2.9	7.1
Personal injuries motor vehicle	18.5	75.3	0.0	1.1	14.3
Professional negligence	7.6	1.2	0.0	0.6	14.3
Deceit/defamation/other wrongful acts	4.5	0.0	0.0	2.3	0.0
Wrongful acts against person/property/goods/land	3.6	1.2	0.0	0.0	0.0
Work injuries	3.4	0.0	0.0	0.0	0.0
Mercantile law	10.7	2.5	97.3	89.1	50.0
Mercantile law – other	8.1	2.5	97.3	50.3	50.0
Sale of goods and services	0.5	0.0	0.0	20.0	0.0
Consumer/insurance/financial and goods disputes	1.5	0.0	0.0	12.6	0.0
Building disputes	0.5	0.0	0.0	6.3	0.0
Partnership/Principal & Agent disputes	0.2	0.0	0.0	0.0	0.0
Other claim types	3.7	0.0	2.7	4.0	14.3
Applications under specific acts/laws	1.0	0.0	0.9	0.6	0.0
Workers compensation	0.5	0.0	0.9	0.0	0.0
Children, family and de facto relationships	1.6	0.0	0.9	0.0	0.0
Real property	0.3	0.0	0.0	2.9	14.3
Employment and workplace relations	0.3	0.0	0.0	0.0	0.0
Other types of claim (including equity)	0.0	0.0	0.0	0.6	0.0
Total	100.0	100.0	100.0	100.0	100.0

Source: JusticeLink database.

Notes: This analysis uses the claim type categories recorded on JusticeLink which is not always accurate (see Section 1). Based on claims from 1,000 random cases. First plaintiff and first defendant selected per case.

[^]97.3% of the Government matters involved the Commonwealth Government (Australian Taxation Office) as plaintiff.

Other' largely consists of not-for-profits, NGOs, sporting groups, interest groups, strata and representatives of other individuals.

There are no matters in this sample with the claim type *Mercantile law – statutory obligation of debt recovery – Income Tax Assessment Act matters*.

Table A8: Type of claim by defendant type, claims finalised in the District Court, 2015

	'Individual (incl. by tutor)'	Government	Business	Other	Nominal Defendant
	N=468	N=121	N=363	N=25	N=14
	%	%	%	%	%
Torts					
Personal injuries	12.8	45.5	50.7	56.0	21.4 [^]
Personal injuries motor vehicle	31.7 [^]	1.7	3.9	4.0	78.6
Professional negligence	4.1	19.8	2.2	0.0	0.0
Deceit/defamation/other wrongful acts	2.8	3.3	3.3	12.0	0.0
Wrongful acts against person/property/goods/land	0.4	14.9	0.8	0.0	0.0
Work injuries	0.0	4.1	4.4	0.0	0.0
Mercantile law					
Other	38.8	2.5	18.2	20.0	0.0
Sale of goods and services	3.0	0.0	6.6	0.0	0.0
Consumer/insurance/financial and goods disputes	3.6	0.0	3.3	0.0	0.0
Building disputes	0.9	0.0	2.8	0.0	0.0
Partnership/Principal & Agent disputes	0.2	0.0	0.0	0.0	0.0
Other claim types					
Applications under specific acts/laws	0.4	0.8	0.8	8.0	0.0
Workers compensation	0.2	0.0	0.8	0.0	0.0
Children, family and de facto relationships	0.4	7.4	0.0	0.0	0.0
Real property	0.9	0.0	1.4	0.0	0.0
Employment and workplace relations	0.0	0.0	0.6	0.0	0.0
Other types of claim (including equity)	0.0	0.0	0.3	0.0	0.0
Total	100.0	100.0	100.0	100.0	100.0

Source: JusticeLink District Court claims recorded as finalised for the first time in 2015.

Notes: This analysis uses the claim type categories recorded on JusticeLink which is not always accurate (see Section 1). Based on claims from 1,000 random cases. First plaintiff and first defendant selected per case. Other['] largely consists of not-for-profits, NGOs, sporting groups, interest groups, strata and representatives of other individuals.

There are no claims in this sample with the claim type *Mercantile law – statutory obligation of debt recovery - income tax assessment act*.

There was only one defendant who was an individual by their tutor, as defendant in a personal injury (motor vehicle matter).

[^] Nominal Defendant can only be a defendant in *Torts – personal injury – motor vehicle accident* claims. This 21.4% of

claims in which the Nominal Defendant is apparently the defendant in *Torts – personal injury* claims, is likely to indicate misclassified claim types (the claim type should have been *Torts – personal injury – motor vehicle accident*).

Table A9: Comparison of sitting type events and listing type events in the District Court recorded on JusticeLink

Sitting and listing event types
Both sittings and listings
Arbitration
Callover
Directions
Directions (Case Managed List)
Directions (Child Care)
Directions (Costs Assessment)
Directions (Defamation)
Directions (List Judge)
Directions (Professional Negligence)
Examination
Hearing
Infant Approval
Judgment
Mediation
Mention
Motion
Objection to Instalment Order
Pre-Trial Conference
Return of Subpoena
Status Conference
Listings only
Assessment Hearing
Costs
Debts
Directions (Commercial)
Directions (Construction)
Directions (CTTT)
Directions (Local Court)
Directions (Property List)
Directions (Property List) (Telephone)
eRegistry
Motion (Long)
Motion (Short)

Sitting and listing event types

Motions (Child Care)

Reasons

Wage or Salary

Sittings only

Acknowledgement of Liquidated Claim

Approval

Defamation (Argument)

Default Judgment – Liquidated – Fail Validation

Default Judgment – Liquidated – Pass Validation

Directions (Family Provision Act Registrar)

Directions Hearing

Early Return of Subpoena

Examination – Fail Validation

Examination - Pass Validation

Garnishee Order – Fail Validation

Garnishee Order – Pass Validation

Garnishee Order – Unrepresented Litigant

General List

Hearing (Registrar)

Instalment – Pass Validation

List Judge

Motion (General Motions List)

Motion (Hearing List)

Pre-Trial Conference (Adjourned)

Pre-Trial Directions

Pre-Trial Review

Registrar's Callover

Reserved Judgments

Return of Summons/Subpoena

Review

Short Matters

Status Conference (Adjourned)

Writ for Levy of Property – Fail Validation

Writ for Levy of Property – Pass Validation

Source: District Court JusticeLink data for claims recorded as finalised for the first time in 2015.

Table A10: Percentage of District Court not listed and listed claim cases that finalised as lapsed in 2015, by type of claim

	N	Not listed %	Listed %	All %
Torts	4,047			
Personal injuries – other	2,087	n/a	0.0	0.0
Personal injuries motor vehicle	1,157	n/a	0.0	0.0
Professional negligence	353	n/a	0.3	0.3
Deceit/defamation/other wrongful acts	206	n/a	0.0	0.0
Wrongful acts against person/property/goods/land	125	n/a	0.0	0.0
Work injuries	119	n/a	0.0	0.0
Mercantile law	2,000			
Mercantile law – other	1,463	33.4	1.0	24.9
Sale of goods and services	248	20.6	0.0	14.1
Consumer/insurance/financial and goods disputes	182	36.2	0.0	25.8
Building disputes	86	9.5	1.5	3.5
Partnership/Principal & Agent disputes	11	75.0	0.0	27.3
Statutory obligation of debt recovery	10	57.1	0.0	40.0
Other claim types	280			
Applications under specific acts/laws	81	33.3	0.0	2.5
Workers compensation	65	0.0	0.0	0.0
Children, family and de facto relationships	56	n/a	n/a	n/a
Real property	53	12.0	0.0	5.7
Employment and workplace relations	13	0.0	0.0	0.0
Other types of claim (including equity)	12	n/a	n/a	n/a
Total	6,327	31.5	0.1	7.3

Source: JusticeLink District Court data for claims recorded as finalised for the first time in 2015.

Note: This analysis uses the claim type categories recorded on JusticeLink which are not always accurate (see Section 1).

Table A11: Elapsed time between District Court claim lodgement and first finalising date recorded on JusticeLink, by type of claim

		< 3 mths	3-6 mths	6-9 mths	9-12 mths	12-18 mths	18-24 mths	Over 2 years	Years of longest case
	N	%	%	%	%	%	%	%	Years
Torts									
Personal injuries – other	2,087	8.0	7.7	13.4	17.4	29.7	12.0	11.9	15.0
Personal injuries motor vehicle	1,157	26.6	11.4	9.1	11.8	16.9	10.4	13.9	16.5
Professional negligence	353	2.8	4.8	13.6	20.4	36.3	10.2	11.9	8.6
Deceit/defamation/other wrongful acts	206	18.4	9.7	13.6	18.9	24.8	8.7	5.8	4.9
Wrongful acts against person/property/goods/land	125	4.8	8.0	19.2	23.2	24.8	6.4	13.6	5.0
Work injuries	119	6.7	10.9	24.4	16.8	18.5	10.9	11.8	4.8
Mercantile law									
Mercantile law – other	1,463	16.2	18.6	11.3	28.2	10.9	6.0	8.7	5.4
Sale of goods and services	248	21.0	12.5	4.0	22.6	16.9	10.9	12.1	4.8
Consumer/insurance/financial and goods disputes	182	11.5	11.0	12.6	28.6	14.8	6.0	15.4	4.4
Building disputes	86	31.4	9.3	7.0	10.5	14.0	11.6	16.3	4.7
Partnership/Principal & Agent disputes	11	9.1	0.0	9.1	36.4	18.2	0.0	27.3	2.8
Statutory obligation of debt recovery	10	0.0	0.0	10.0	40.0	30.0	0.0	20.0	3.8
Other claim types									
Applications under specific acts/laws	81	28.4	29.6	12.3	9.9	6.2	6.2	7.4	4.7
Workers compensation	65	9.2	9.2	15.4	21.5	16.9	4.6	23.1	4.1
Children, family and de facto relationships	56	14.3	25.0	25.0	17.9	14.3	3.6	0.0	1.7
Real property	53	18.9	9.4	13.2	13.2	15.1	15.1	15.1	4.8
Employment and workplace relations	13	0.0	30.8	15.4	15.4	15.4	15.4	7.7	2.6
Other types of claim (including equity)	12	8.3	16.7	25.0	16.7	0.0	8.3	25.0	2.5
Total	6,327	14.6	11.7	12.1	19.6	20.9	9.5	11.6	16.5

Source: District Court JusticeLink data for claims recorded as finalised for the first time in 2015.

Note: This analysis uses the claim type categories recorded on JusticeLink which are not always accurate (see Section 1).