



**Justice is open to everyone in the
same way as the Ritz Hotel:
what does court data tell us about the parties to
civil cases?**

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ACSPRI 2018, Sydney
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Conference paper

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Law and Justice Foundation of NSW

- Independent, statutory, not-for-profit established in 1967 to improve access to justice for the people of NSW
- Identify legal and access to justice needs, particularly of the socially and economically disadvantaged and identify reforms through evaluation and research
- Currently 6 researchers, recruiting Research Assistant(s)



This research

- This work was funded by the NSW Department of Justice
- Asked us to explore the utility of NSW civil court and tribunal data to answer questions about:
 - who is using the courts
 - for what purpose
 - with what outcomes

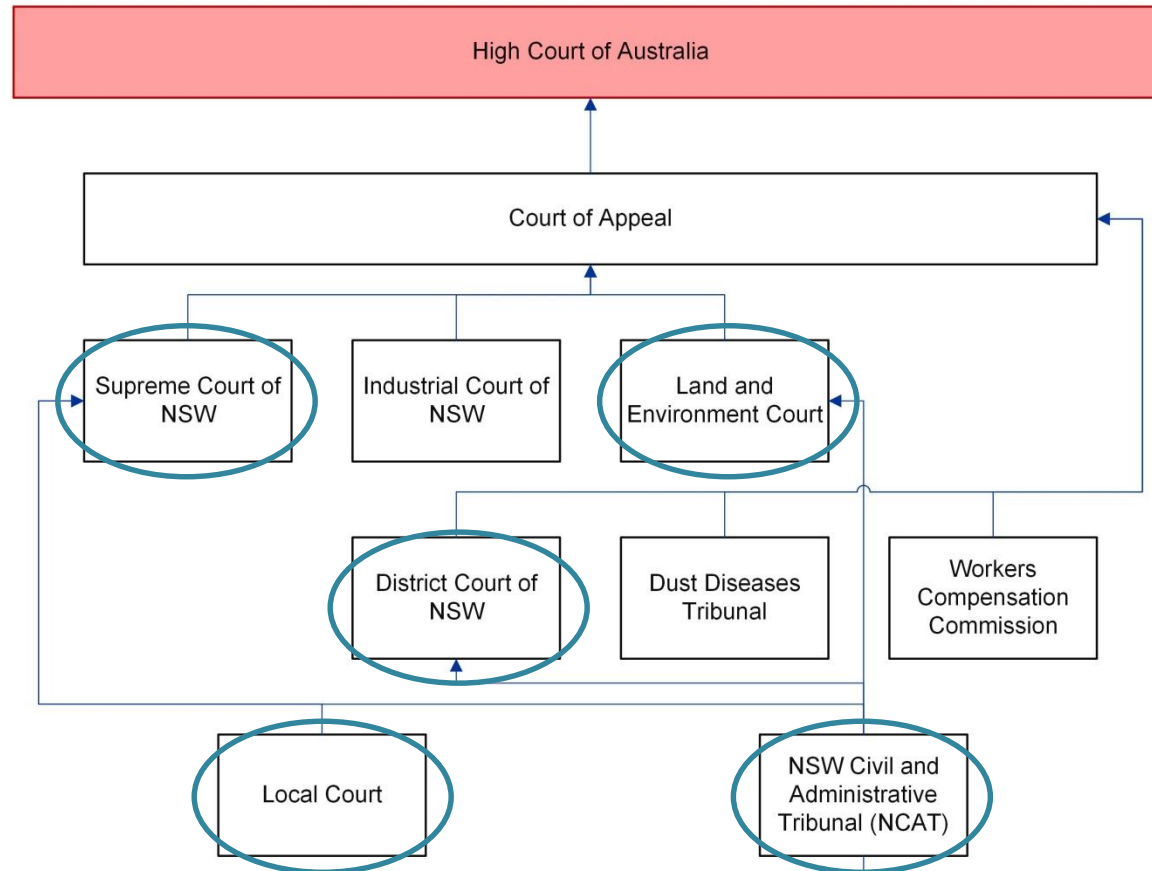


The civil justice system

- Civil legal matters: broadly speaking private disputes between two or more parties relating to legal obligations
- Most not enforced through the courts or tribunals
- Expensive, time consuming, stressful
- To what extent do these barriers have an impact on equality of access to justice?
 - Bringing cases to court/tribunal
 - Who has cases brought against them
 - Outcomes achieved



Civil justice courts in New South Wales



- Administrative and Equal Opportunity
- Consumer and Commercial
- Guardianship
- Occupational
- Internal Appeals



Methodology

- Review of relevant documents, including legislation, court rules and regulations, MI user guides
- Discussions with court and MI system staff
- Purposive and random samples of hard copy of hundreds of case files
- Administrative data relating to all finalised cases in a specified calendar year
- Sample of 1000 cases in each jurisdiction/NCAT division – details of applicant(s) and respondent(s)



Challenges of civil court data

- Data fields are for purpose of administering the court
- MI System run by external contractors
- Pre-defined reports of aggregated data provided for management purposes
- No data dictionary
- Some fields derived – which ones and how?
- Can't always distinguish: negative response, not applicable, and missing
- Dates of events differ from dates of data entry
- Intermediary handles data request
- Different interpretation of data requests
- Cases close and re-open
- Legalese
- Doesn't provide user perspective or answer the 'why'



But...

- Lower cost than other data collection methods
- Population samples
- Available consistently over time
- Access to detailed (accurate) information of (real time) events
- Represents what is important to the business



Civil court administrative data

- Collected for administration and record keeping
- Incorporates scanned documents
- Complex: multiple tables with linking keys (proceeding number, entity id etc.)
- Hierarchical, for example:

CASES	PROCEEDINGS	PARTIES	LEGAL REPRESENTATION
Case A	Proceeding 1: Claim	Applicant 1	
		Respondent 1	Lawyer 1
			Lawyer 2
		Respondent 2	
	Proceeding 2: Cross claim	Applicant 1	Lawyer 1
		Applicant 2	
Respondent 1			



Information available for a party

Usually ...

- Litigant/party names (incl. Department, Commissioner, Council)
- Trading as
- 'Individual' or 'Organisation'
- 'Corporate' or 'non-corporate' for fee paying
- ABN /ACN (for organisations)
- Addresses (sometimes only of the legal representative)

Sometimes ...

- Concession fee (*poor quality for this purpose*)
- Applicant type (e.g. landlord, tenant, consumer)
- Interpreter required



Coding parties into types

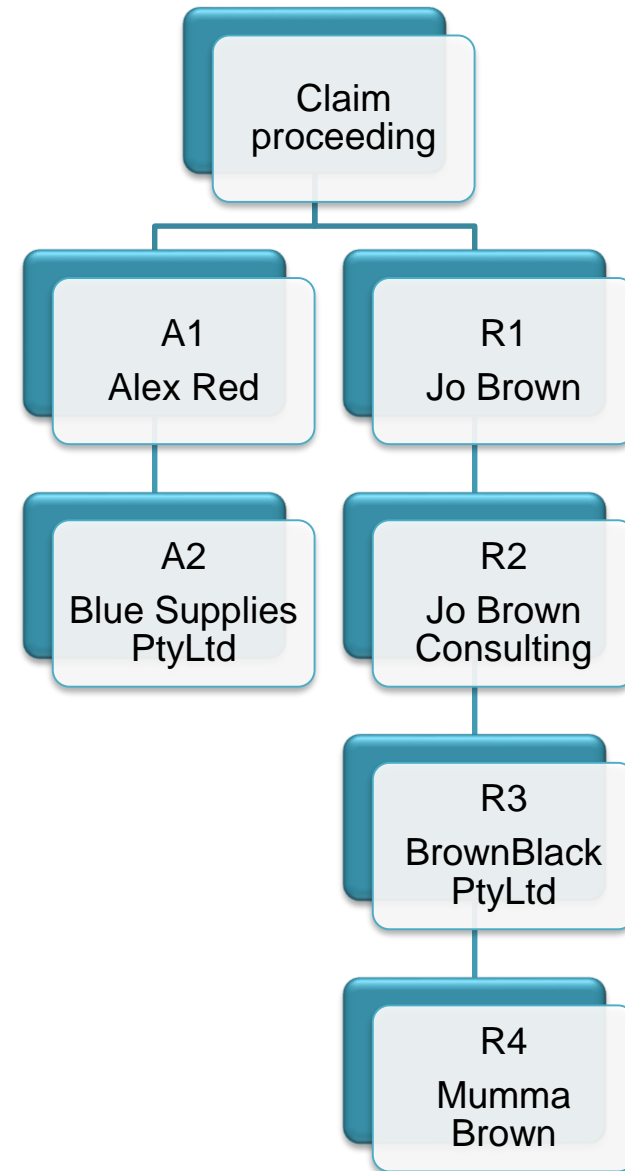
- Private individuals – by default
- Organisational type
 - Business (by industry)
 - Government (Local, NSW, Commonwealth, Other)
Department, Council, Commissioner
 - Other (including NGOs, Strata owners)
- Role in proceedings (e.g. land owner, landlord, tenant)
- Hidden parties (e.g. insurers)
- Multiple parties



Identifying entities

How many parties
involved?

Individual or organisation?





What does equality mean in the civil court context?

- **Equal access of applicants** on the basis of age, gender, financial, educational, cultural background etc.
- **Respondents not targeted** on the basis of their age, gender, financial, educational or cultural background etc.
- **Balance of power** between the parties: access to legal assistance, previous experience, time etc.



Inequality in the experience of problems

- According to the Foundation's LAW survey 9% of the population experience 65% of legal problems

The most vulnerable to legal problems in 2008

people with a
disability



single parents



unemployed
people



people living in
social housing

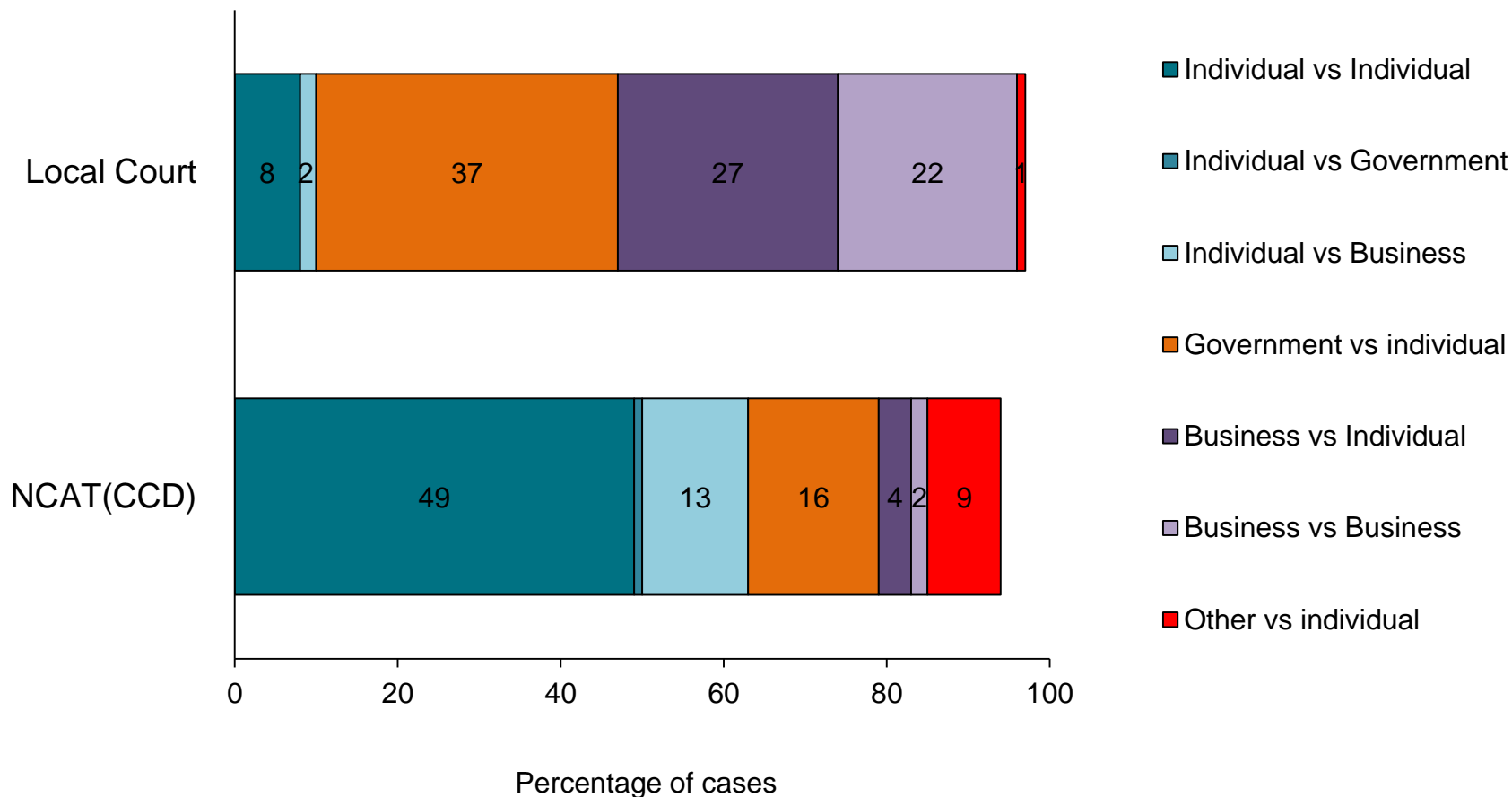


business owners





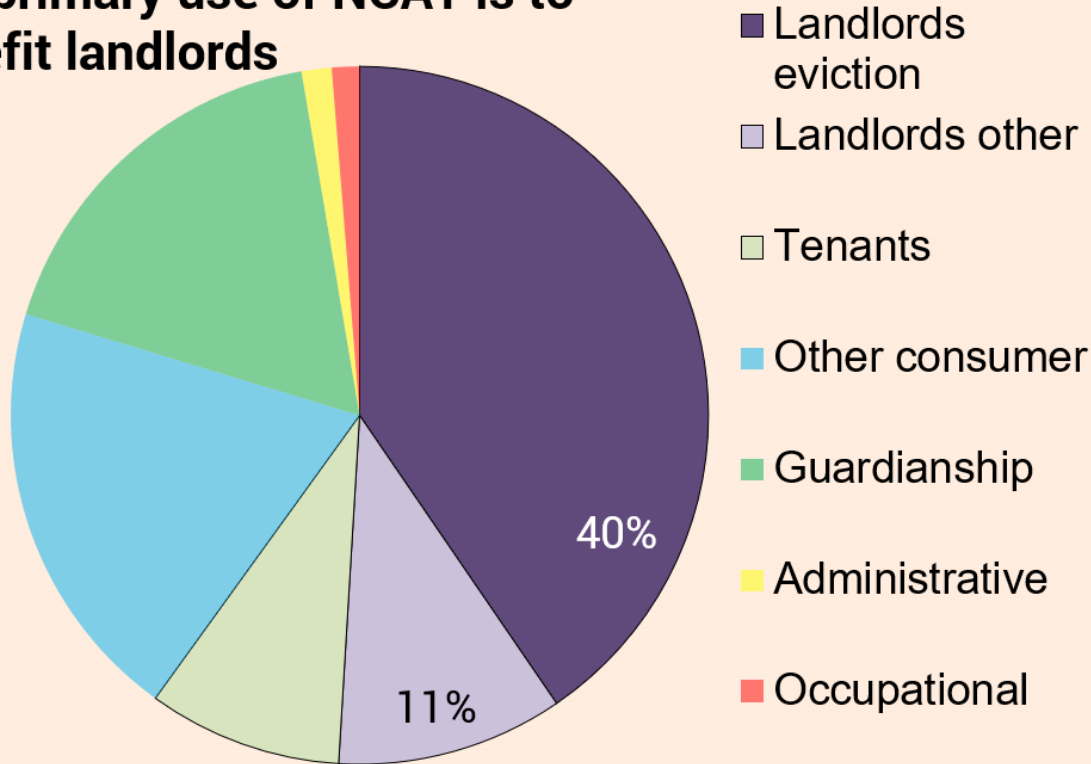
Who is taking action against whom?





Conclusion of Tenant's Union

The primary use of NCAT is to benefit landlords





Place of dispute

- Other than type of entity, address may provide some information about the parties to the dispute
- However not well recorded, or address of legal representative
- For some types of matter, place of dispute is recorded e.g.
 - Tree disputes
 - Tenancy matters



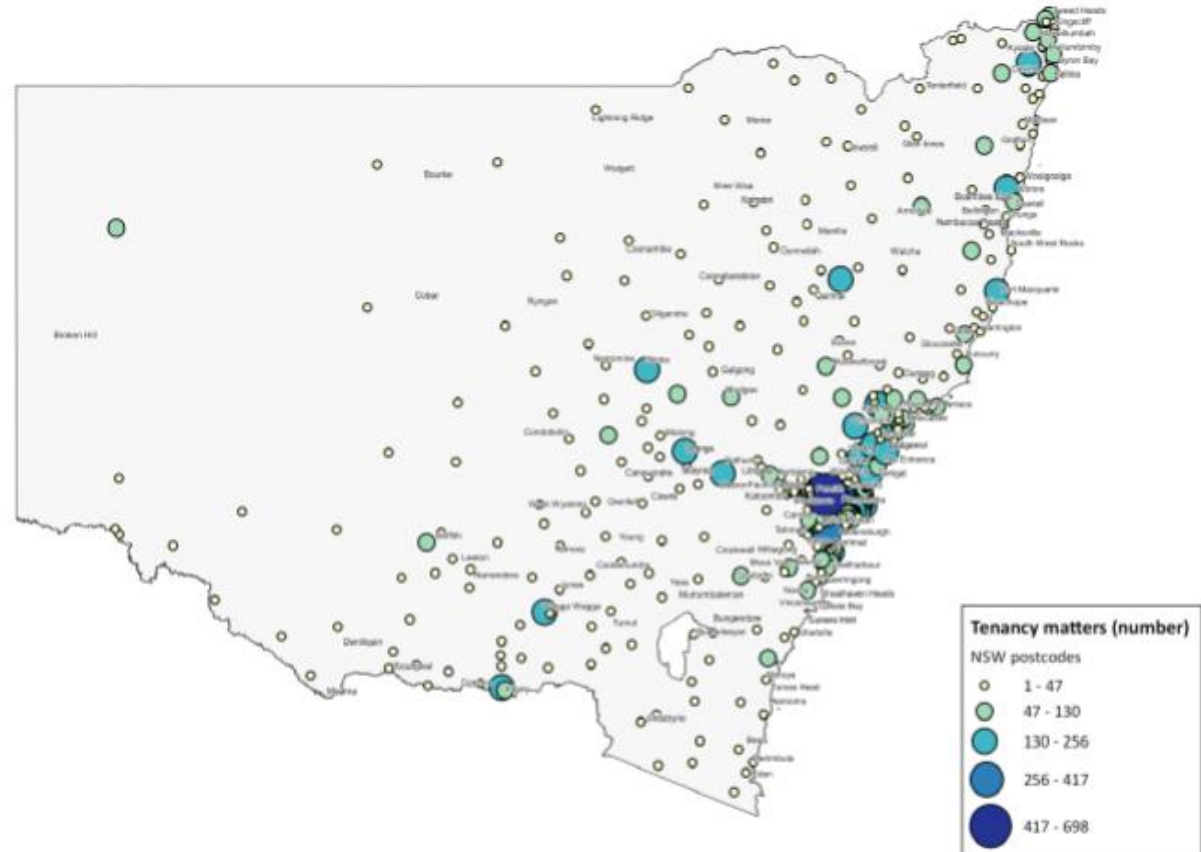
Tree/hedge matters



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



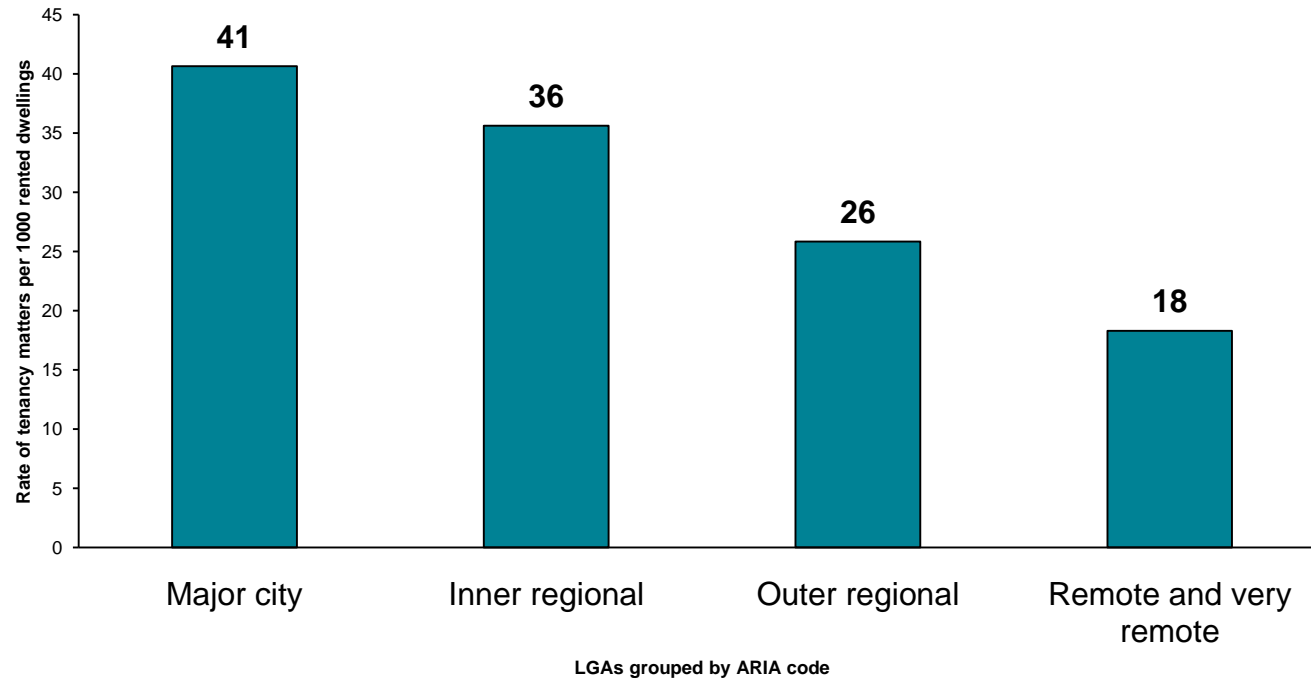
Place of dispute in NCAT tenancy list



Source: CCD CMS, Tenancy list matters finalised in 2015, place of dispute postcode



Area of place of dispute in NCAT tenancy list

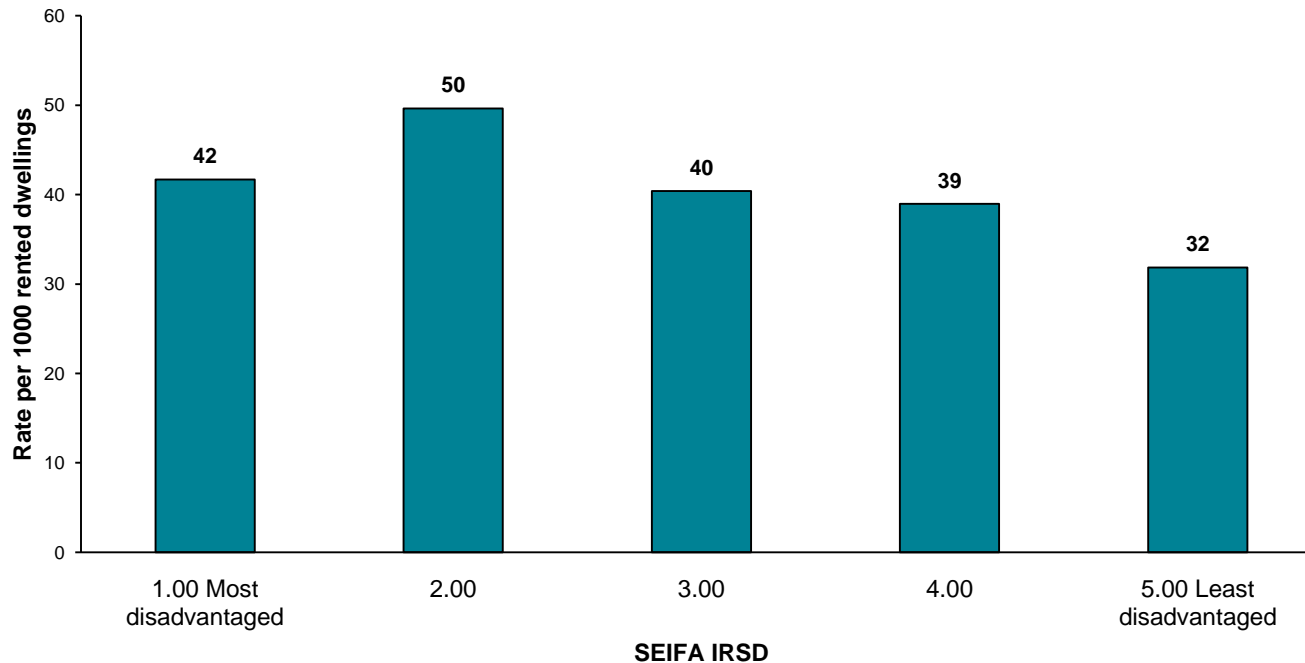


Rate of cases per 1000 rented dwellings decreases with distance from city areas

Source: CCD CMS, Tenancy list matters finalised in 2015, place of dispute LGA



Area disadvantage of place of dispute in NCAT tenancy list



Higher rates of tenancy matters in the more disadvantaged areas of NSW

Source: CCD CMS, Tenancy list matters finalised in 2015, place of dispute LGA



What about outcomes?

- A very small proportion of cases get decided by the judiciary
- Many are withdrawn (some of these may have 'settled')
- Many finalise by consent (settle)
- Courts/tribunals perception of 'success' may not be those of parties
- Differences in outcomes attributed to case specific factors
- Some evidence that legal representation makes a difference



Conclusion

- Currently no routine monitoring of equal access to the civil courts and tribunals
- Changes to data collection required: burden on participants, court administration, complex data capture systems
- More information about the characteristics of parties could be used to monitor the impact of any changes in the way services are delivered on equality of access to justice
- Moves to online dispute resolution and/or alternative dispute resolution may be an opportunity to collect this information



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