

Access to Justice Report – The Role of Tribunals

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**Commissioner, Productivity
Commission**

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What have we been asked to do?

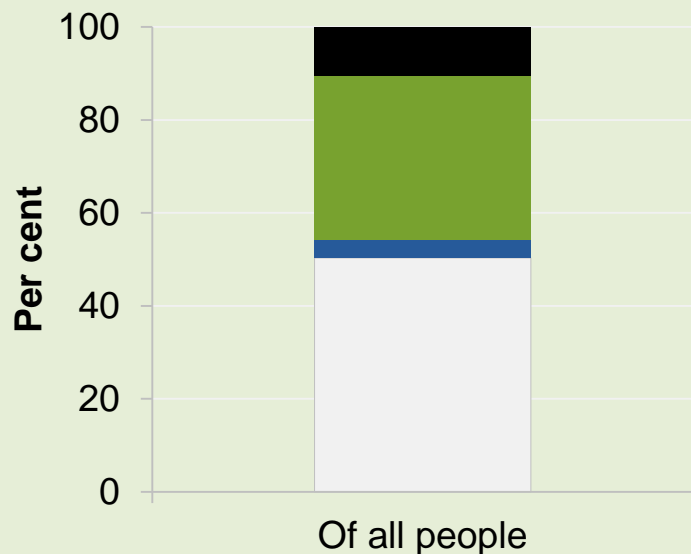
- Wide terms of reference that posed four key questions
 - How accessible is the civil justice system?
 - What inhibits access?
 - What are the impacts of a lack of accessibility?
 - How might access be improved?

Context is important

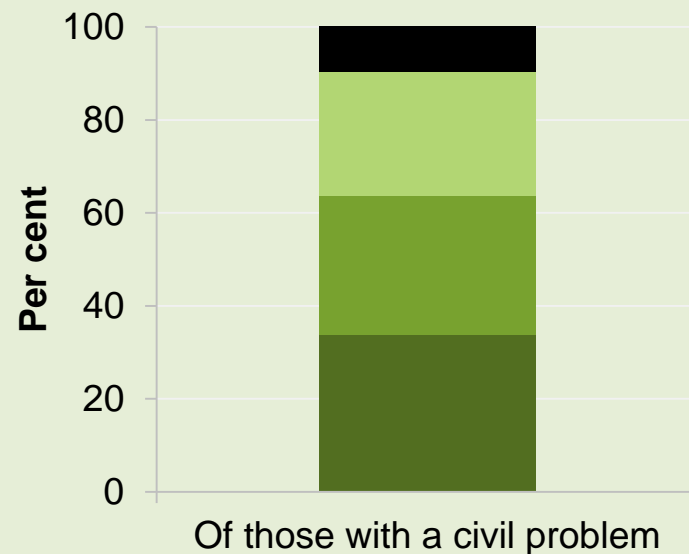
- The notion of a civil justice 'system' is problematic
- Disputes can be resolved in many ways:
 - *Informally: Private and Alternative Dispute Resolution; Ombudsmen*
 - *More formal mechanisms: Tribunals; Courts*
- Commission examined each of these in turn

Legal disputes are common ...

The composition and concentration of legal problems



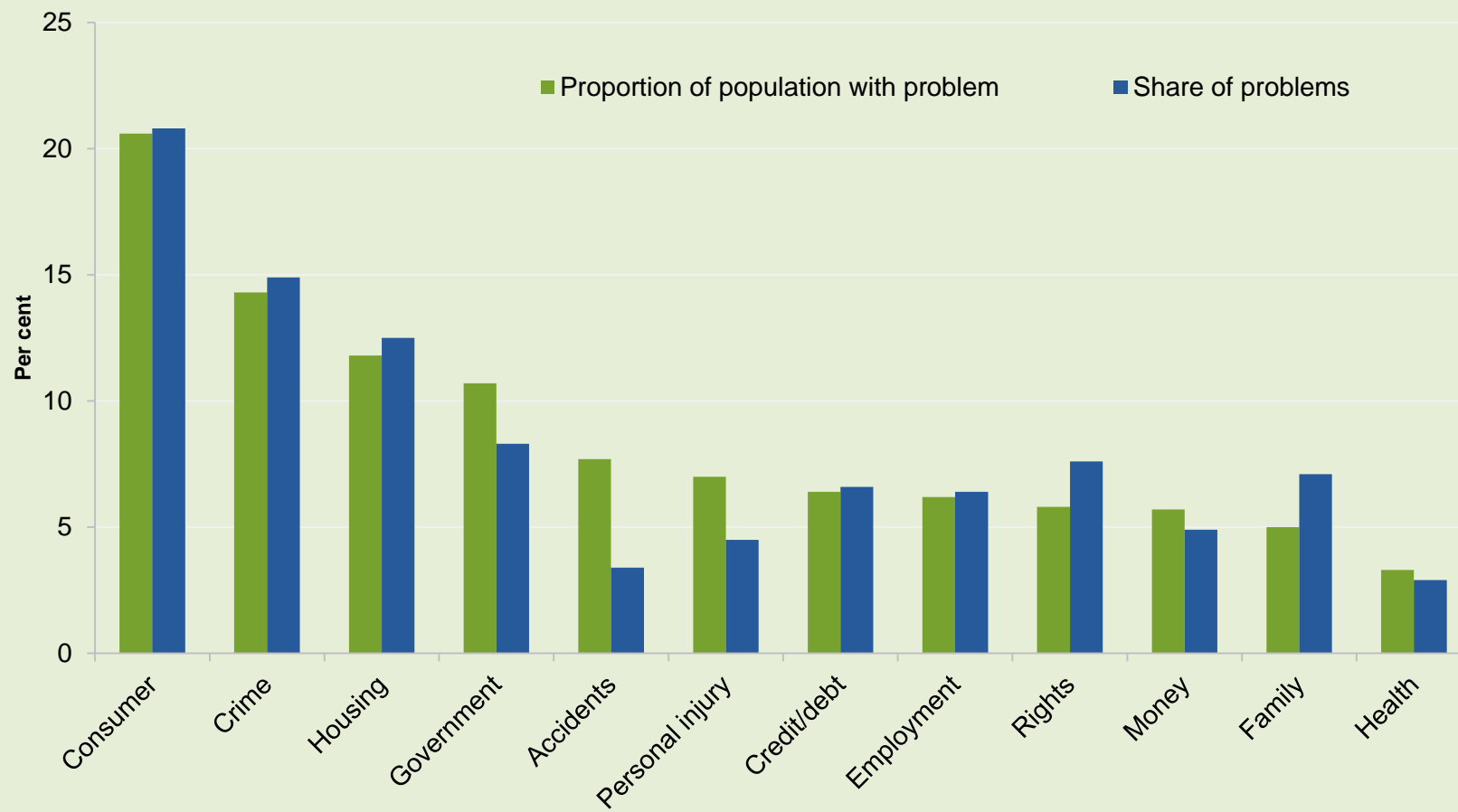
- Both civil and criminal problems
- Only civil problems
- Only criminal problems
- No problems



- 12+ problems
- 4-11 problems
- 2-3 problems
- 1 problem

Source: Commission estimates based on unpublished *LAW Survey data*

... and span a range of issues



Tribunals play a key role

	Ombudsmen and complaint bodies	Tribunals	Civil courts	
Number of institutions/providers	71 Ombudsmen and complaint bodies <ul style="list-style-type: none"> National: 22 States/territories: 49 	58 Tribunals <ul style="list-style-type: none"> Commonwealth: 11 States/territories general: 4 States/territories specialist: 43 	43 Courts <ul style="list-style-type: none"> Commonwealth: 4 States/territories general: 21 States/territories specialist: 18 	
Nature of service	<ul style="list-style-type: none"> Receive and resolve complaints Conduct inquiries into individual or systemic cases 	<ul style="list-style-type: none"> Administrative review Civil dispute resolution Binding decision 	<ul style="list-style-type: none"> Judicial dispute resolution Binding decision Some courts provide 'in-house' alternative dispute resolution services 	
Volume of matters	Total 542 000 complaints (arising from 3 709 000 contacts) <ul style="list-style-type: none"> National: 277 000 States/territories: 265 000 	Total 395 000 <ul style="list-style-type: none"> Commonwealth: 71 000 States/territories general: 194 000 States/territories specialist: 130 000 	Total 673 393 <ul style="list-style-type: none"> Magistrates: 420 144 District: 28 214 Supreme: 28 309 Probate: 65 787 Federal: 5 277 Family: 33 120 Federal Circuit: 92 542 	
Costs for disputant	No costs	<ul style="list-style-type: none"> Tribunal fees Expert fees Cost of attendance If represented - lawyers' fees 	<ul style="list-style-type: none"> Court fees Lawyers' fees Counsel fees Expert fees Cost of attendance Risk of adverse costs award 	
Funding arrangements	Cwth	\$232 million	\$244 million	\$309 million
	States	\$136 million	\$264 million	\$517 million
	Industry	\$113 million	--	--

Being in the right place at the right time

- People often don't know they have a legal problem, or if they do, they don't know how best to address it. Recommendations include
 - *More accessible information and education for consumers*
 - *Better resourced and more efficient legal assistance services*
 - *Legal education should equip students to better match the most appropriate resolution option (including non-court options) to the dispute type and characteristics*
- Together, these recs should help better direct people to tribunals appropriately

The role of tribunals

- Tribunals intended to provide informal, low cost and timely avenues for dispute resolution, typically through
 - *Active case management*
 - *Use of ADR*
 - *Limiting legal representation and costs awards*
 - *Assisting self-represented litigants*
- While tribunals appear to be operating well in the main, some tribunals not always meeting these aims



Creeping legalism

- There are concerns about 'creeping legalism'
 - *Small businesses in VCAT faced costs that averaged 74 per cent of the amount in dispute*
 - *Legal costs incurred by Vet Surgeons Board WA quadrupled since commencement of SAT*
- To address this
 - *Where lawyers appear, they should uphold tribunal objectives of being fair, just, economical, informal and quick*
 - *Improved tribunal processes and limiting legal representation would assist in meeting original intent of tribunals*

Improved processes

- More use of ADR
 - *Use as default in first instance where demonstrably efficient and effective (eg low value litigation), with provision to exempt cases where clearly inappropriate*
 - *Consider targeted pilots for use of ADR for dispute types that are not currently referred to such processes*

Legal representation

- Should be limited where
 - *Matters relatively simple in legal and fact terms, equality between parties the norm*
 - *Rigorously apply existing restrictions – only with leave, and only granted where one party would be otherwise significantly disadvantaged*
 - *Consider if current restrictions on representation could be applied more broadly*
- Tribunals should report on the frequency of legal representation and whether leave requirements are in place

Structure of tribunals

- Tribunals could be more effective and efficient through
 - *Developing and adopting new technology*
 - *Co-location, amalgamation or other restructuring options*
 - *Better collection and reporting of performance data*



Thank you