Access to Justice Report – The Role of Tribunals

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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?
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

Of all people

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

Of those with a civil problem

- 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Source: Commission estimates based on unpublished LAW Survey data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

<table>
<thead>
<tr>
<th>Ombudsmen and complaint bodies</th>
<th>Tribunals</th>
<th>Civil courts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number of institutions/providers</strong></td>
<td>71 Ombudsmen and complaint bodies</td>
<td>58 Tribunals</td>
</tr>
<tr>
<td><em>National</em>: 22</td>
<td><em>Commonwealth</em>: 11</td>
<td><em>Commonwealth</em>: 4</td>
</tr>
<tr>
<td><em>States/territories</em>: 49</td>
<td><em>States/territories general</em>: 4</td>
<td><em>States/territories general</em>: 21</td>
</tr>
<tr>
<td><strong>Nature of service</strong></td>
<td><em>States/territories specialist</em>: 43</td>
<td><em>States/territories specialist</em>: 18</td>
</tr>
<tr>
<td><em>Receive and resolve complaints</em></td>
<td><em>Administrative review</em></td>
<td><em>Judicial dispute resolution</em></td>
</tr>
<tr>
<td><em>Conduct inquiries into individual or systemic cases</em></td>
<td><em>Civil dispute resolution</em></td>
<td><em>Binding decision</em></td>
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<tr>
<td><strong>Volume of matters</strong></td>
<td><em>Binding decision</em></td>
<td><em>Some courts provide ‘in-house’ alternative dispute resolution services</em></td>
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<tr>
<td>Total 542 000 complaints (arising from 3 709 000 contacts)</td>
<td>Total 395 000</td>
<td>Total 673 393</td>
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<tr>
<td><em>National</em>: 277 000</td>
<td><em>Commonwealth</em>: 71 000</td>
<td><em>Magistrates</em>: 420 144</td>
</tr>
<tr>
<td><em>States/territories</em>: 265 000</td>
<td><em>States/territories general</em>: 194 000</td>
<td><em>District</em>: 26 214</td>
</tr>
<tr>
<td><strong>Costs for disputant</strong></td>
<td><em>States/territories specialist</em>: 130 000</td>
<td><em>Supreme</em>: 28 309</td>
</tr>
<tr>
<td>No costs</td>
<td></td>
<td><em>Probate</em>: 65 787</td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>Federal</em>: 5 277</td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>Family</em>: 33 120</td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>Federal Circuit</em>: 92 542</td>
</tr>
<tr>
<td><strong>Funding arrangements</strong></td>
<td><strong>Tribunal fees</strong></td>
<td><strong>Court fees</strong></td>
</tr>
<tr>
<td>Cwth</td>
<td>$232 million</td>
<td>Lawyers’ fees</td>
</tr>
<tr>
<td>States</td>
<td>$136 million</td>
<td>Counsel fees</td>
</tr>
<tr>
<td>Industry</td>
<td>$113 million</td>
<td>Expert fees</td>
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<tr>
<td></td>
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<td>Cost of attendance</td>
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<td>Cost of attendance</td>
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<td>Risk of adverse costs award</td>
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</tbody>
</table>
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