Self-Represented Litigants

Gathering Useful Information

Final Report – June 2012
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# Abbreviations

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<thead>
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<th>Description</th>
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<tr>
<td>AAT</td>
<td>Administrative Appeals Tribunal</td>
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<td>ABS</td>
<td>Australian Bureau of Statistics</td>
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<td>ACJI</td>
<td>Australian Centre for Justice Innovation</td>
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<td>ADR</td>
<td>Alternative Dispute Resolution</td>
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<td>AIJA</td>
<td>Australasian Institute of Judicial Administration</td>
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<td>ALRC</td>
<td>Australian Law Reform Commission</td>
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<td>Cth</td>
<td>Commonwealth</td>
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<td>FWA</td>
<td>Fair Work Australia</td>
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<td>IT</td>
<td>Information Technology</td>
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<tr>
<td>MRT–RRT</td>
<td>Migration Review Tribunal–Refugee Review Tribunal</td>
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<td>NADRAC</td>
<td>National Alternative Dispute Resolution Advisory Committee</td>
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<td>NNTT</td>
<td>National Native Title Tribunal</td>
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<td>OMARA</td>
<td>Office of the Migration Agents Registration Authority</td>
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<td>PILCH</td>
<td>Public Interest Law Clearing House</td>
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<td>SCT</td>
<td>Superannuation Complaints Tribunal</td>
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<td>SRCLS</td>
<td>Self-Representation Civil Law Service</td>
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<td>SRL</td>
<td>Self-represented litigant</td>
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<td>SSAT</td>
<td>Social Security Appeals Tribunal</td>
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<td>VLRC</td>
<td>Victorian Law Reform Commission</td>
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Executive Summary

The Australian Centre for Justice Innovation (ACJI) has been funded by the Commonwealth Attorney-General’s Department to consider how the mapping, exploration and articulation of the population of self-represented litigants (SRLs) in the civil justice system in Australia takes place and to make recommendations to improve the collection of data relating to SRLs. This Project has taken place in the context of a much larger initiative being undertaken by the Commonwealth Attorney-General’s Department – the Civil Justice Evidence Base Project. That initiative and the preliminary objectives of the civil justice system that have been articulated are intended to develop a framework to guide future data collection, research and evaluation about the civil justice system.

Overall, this study shows that in the Australian Commonwealth civil justice system only limited data is collected about SRLs. Surveys conducted by ACJI as well as a Literature Review undertaken in May 2012 indicate that justice agencies fall into several distinct groups in respect of SRL information:

1) Those agencies that are intensive collectors of information on SRLs, which are characterised by the use of differentiated management processes, and/or specific programs, for SRLs.

2) Agencies that are infrequent and limited collectors of information about SRLs, who do not differentiate their processes to cater for SRLs, and in many instances, external agencies operate programs outside of their operational scope to deal with SRLs.

3) Agencies or bodies that collect limited information in an ad hoc manner.

Between and within all three groups, there is little consistency in nomenclature nor a systematic approach to data mining or data presentation across databases. Similarly, information exchange about the success of SRL programs is limited.

SRLs may choose and have rights to choose or not to choose representation. However, the circumstances of SRLs, such as the ability to afford representation, can also remove choice. In addition, many SRLs may not need much support or representation, particularly if they are attending tribunal or other processes which are intended or adapted to support self-representation. The Literature Review has suggested that, in some circumstances, the outcomes for SRLs in some processes may not be as good as those with representation. There is, however, little ongoing data to enable conclusions to be drawn about this point.
Likewise, the complexity or non-complexity of court processes and the nature of the subject matter of the litigation may have an effect on outcome and on the incidence of SRLs, yet there is no data linking these issues to explore this. The availability of Legal Aid funding has been said to be a determining factor in terms of the SRL population in the family law area; however, the available literature suggests that this may only be one factor that has influenced the number of SRLs.

The Survey found that specific data on SRLs is scant in ongoing data collections although some case management systems have the ability to link SRL status to other data variables such as case duration or number of appearances for example which might give added information about SRLs. In addition, SRLs can change status throughout court and litigation processes and their status may be known or unknown to a court or tribunal. The demographic information collected about SRLs in Australia is generally limited to issues required for operational purposes, such as geographical location, age and gender and concession card status (for fee waiver or fee reduction purposes).

In some jurisdictions, self-representation is the norm and legal representation is unusual; in these cases, self-representation is not seen as problematic and processes are more tailored to self-representation. In some areas, there is almost no data on SRLs; for example, there is little available data on those who use Alternative Dispute Resolution (ADR) or other services in the broader justice system and it may be more likely that such people will not be represented.

Justice agencies have distinct methods for and approaches to dealing with SRLs that also influence the extent of data collection. The first group includes those agencies that transact with SRLs in a single instance – tribunals, some courts or Legal Aid agencies – and will collect data only for that transaction. These agencies are characterised by a screening and streaming approach to dealing with SRLs – with referral to another agency, court or tribunal process. The second group of agencies that work with SRLs ‘alongside’ a litigation process may offer support services, information collection advice, navigation and ‘shepherding’ services. These agencies are likely to collect more detailed information and may also support people with a dispute before entry into a litigation process.

The exercise of mapping the SRL population is complicated by inconsistencies in the definition of ‘self-represented litigant’ and limited accompanying data. The inconsistencies in definition appear to be due to the differing jurisdictional requirements as well as the motivations and requirements of data collectors and those who have reported on SRLs.

This Report considers the data collection practices of a number of Australian courts, tribunals and related legal service providers to explore what data is available and how data collection can improve into the future. Consideration has been given to the question of how an SRL can be defined. It has been recommended that it is simply not sufficient to define an SRL by the absence of representation at a point in time. A more
A nuanced definition is required that will enable better data to be gathered into the future.

Inconsistencies in definition are also highlighted by the broader system-wide variations noted below:

Litigant in person (unrepresented litigant) is an applicant or a respondent with a family law matter, on track to appear in a court room in ancillary proceedings, who has given his or her own address for service on documents filed with the Family Court or Magistrates Court: see Family Law Council, Litigants in Person: A Report to the Attorney-General prepared by the Family Law Council. (Canberra, August 2000).

Self represented litigant: anyone who is attempting to resolve any component of a legal problem for which they do not have legal counsel, whether or not the matter actually goes before a court or tribunal: see Canadian Forum on Civil Justice, Alberta Legal Services Mapping Project, An Overview of Findings from the Eleven Judicial Districts Final Report (Canadian Forum on Civil Justice, July 2011).

In this Report, the first definition has guided the work of the Project Team. Hence the data collections that have been reviewed are primarily those that relate to people who are active in court or tribunal proceedings. However, the Project Team considers that the broader second definition is more useful in that it enables data-sets outside courts and tribunals to be considered, which can reveal why and how some people will resolve their disputes before court or tribunal entry or shortly afterwards.

As noted in the Literature Review published by ACJI in May 2012, there is a range of desirable data variables derived from past studies on SRLs (listed in Paragraph 4.8 of this Report) that would give a more complete picture of SRLs, although this should also be supplemented by point-in-time and longer-range qualitative studies. This data falls into three groups:

1. Individual or demographic characteristics that influence representative status for those that are involved in court, tribunal and outside court dispute resolution processes. Such characteristics include whether the SRL is a business and if so of what size and composition and if the SRL is an individual the demographic characteristics include the age, gender, income, concession card status, location (the term ‘postcode justice’ has been used to describe this variable), country of birth and main language spoken by the SRL. This data may enable conclusions to be made about the typical characteristics of SRLs, that is, whether SRL’s in particular jurisdictions are more likely to be of a particular ethnicity or from a particular age bracket or may have other characteristics that can assist courts, tribunals and others to better understand their communication and other needs or understand where some SRLs are not accessing services.
2. Dispute characteristics that dictate whether or not representative status will be significant to the dispute resolution processes used, the outcomes and the impact on the court, tribunal or dispute resolution service. These characteristics include the type of matter, the processes used, whether the case involves complex legal or procedural issues and whether there is any connection between those case characteristics and the likelihood of a person being self-represented or whether self-representation is likely to have less impact. For example, are family cases involving at least one self-represented litigant more likely to settle or take longer periods of time in a hearing process and is this linked, and in what way, to the complexity of the issues in the dispute?

3. Court and tribunal process data variables that indicate the impacts on processes or systems and may highlight a need for accommodation to different representative statuses. These variables may arise in the data that courts and tribunals collect with respect to pre action requirements, case management events, time intervals, case outcomes, case duration and other factors, which may highlight a need to alter processes or make other accommodation for self-represented litigants.

However, in the survey conducted by ACJI it was clear that many courts and tribunals collect data that is relevant to immediate operational purposes only and may deem it unnecessary to collect a broad range of data on SRLs. There are also no shared data definitions and data variables need to be defined to ensure collection is useful. In addition, there are no data-sets about SRLs in the civil justice area in the context of pre-litigation dispute resolution. In general, where data is collected, it is usually not linked or analysed. In addition, the lack of data-sharing makes broader system wide analysis difficult and the lack of qualitative work means the existing limited data collection cannot be interpreted and analysed.

Overall, the Literature Review reveals that the number of SRLs in courts and tribunals is reportedly greater than in previous decades in all Commonwealth courts and tribunals, with proportions ranging between 17 and 93 per cent, depending on a number of factors that include, but are not limited by, the nature of the case, the informality of the forum and the availability of funded legal resources. Perceptions of an increase may be greater than the reality. What is known is that a range of policy responses may have had an impact on the number and proportion of SRLs and their interaction with and impact on court and tribunals. However, these responses have not been adequately measured.

Some SRLs are seen as problematic in some jurisdictions because their behaviour can be viewed as unreasonable or difficult (rather than vexatious). The Survey found that, despite this being perceived as an issue, there is almost no data collected in civil
jurisdictions that could assist courts or tribunals to better understand or address this issue.

The ACJI Survey also revealed that there is no linkage of data; that is, data can usefully be collected by agencies that provide services outside courts but is not shared or followed up with courts and tribunals. Likewise, those who provide support to SRLs receive no feedback from courts and tribunals about whether or not those services assist in the early resolution of disputes.

How to Read this Report

This Report incorporates material from the Literature Review that was undertaken in May 2012, as well as a survey of relevant bodies that was undertaken in May and June 2012 and an analysis of those findings. The Report is divided into a number of sections.

- An initial section gives an overview of the background and methodology used.
- Comments and an analysis of the statistical data collections of various courts and agencies is undertaken in the context of the Literature Review and informed by the work done by the Commonwealth Attorney-General’s Department on developing a framework to guide future data collection, research and evaluation.
- Recommendations for the shorter and longer term are made. These recommendations are directed at courts, tribunals and other agencies and are focussed on how to build a more integrated data base.

ACJI received responses from nearly all court, tribunals, Legal Aid organisations, PILCHs and community legal centres operating in the federal civil justice system that were contacted for information and interviews. There was a considerable level of interest in the subject matter of SRLs and a general enthusiasm to contribute to the Project. Many organisations interviewed were looking to improve their responses to SRLs and saw data collection as an integral part of this. ACJI wishes to thank all of those people who gave their time and assisted the Project, particularly given the restricted time-frames within which the Project was conducted.
Background and Methodology

Introduction

1.1. Australian courts and tribunals in civil jurisdictions have accommodated the special needs of self-represented litigants (SRLs) by adapting their practices and by sometimes introducing special technology and information supports that assist SRLs. However, despite numerous policy and practice initiatives, relatively little is known about how active SRLs are within our civil litigation system or broader civil justice system (that extends beyond courts and tribunals), how they are supported and whether or not programs that are developed have resulted in positive or better outcomes for SRLs.

1.2. A number of Australian and overseas inquiries have sought to address this data gap and identify techniques to gather data about SRLs that could be accorded the title ‘best practice’. However, because these programs have been completed in isolation, with limited opportunities for effective comparison, there is as yet no common basis of measurement from which reforms can be instituted and achievements assessed.

1.3. The initiative by the Commonwealth Attorney-General’s Department to establish objective standards for comparative data is part of a much larger project that is directed at supporting evidence-based decisions in the civil justice area. That initiative has been directed at beginning the process of identifying the characteristics of effective measures that, if relied on by policy-makers and institutional organisations, will guide long-term improvements in respect of this complex area. The Project being conducted by ACJI is directed at exploring and identifying gaps in data in relation to SRLs.

1.4. The aim of the much broader Commonwealth evidence-based initiative is to develop over time:

- a robust evidence base that will enable answers to important questions about what the civil justice system delivers to the people who use it, its value to the Australian community and the extent to which it meets broad public policy objectives;
reliable information about people’s needs and expectations, why and how they choose and move between services, what influences those choices and decisions, what happens to them along the way, the extent to which their needs and expectations are met and the outcomes they get; and

approaches to analysing information that is gathered to support a better understanding of how changes to one part of the system may influence other parts of the system so that better judgments can be made about the system-wide impacts of policy and service delivery changes.

1.5. This Project has been undertaken by the Australian Centre for Justice Innovation (ACJI) at Monash University and has been made possible through funding from the Commonwealth Attorney-General’s Department in May and June 2012.

About the Centre

1.6. ACJI is a Research Centre in the Faculty of Law at Monash University that is supported and has been created with the assistance of the Australasian Institute of Judicial Administration (AIJA). ACJI is administratively supported by Monash University. ACJI engages in three core streams of activity:

- Research to provide the intellectual underpinnings for increased court efficiency and effectiveness and to support improved governance, the continued development and implementation of court innovations and the adoption of non-adversarial justice and ADR approaches.
- Research consultancy in the areas of program design, piloting, monitoring and evaluation of court innovations and non-adversarial justice and ADR approaches.
- Education and training involving the delivery to law students, legal practitioners, court and justice system administrators, judicial staff and allied professionals to achieve innovations in the court system and non-adversarial justice and ADR concepts and practice.

1.7. ACJI has been established to become Australasia’s leading source of expert advice on justice, courts and alternative dispute resolution. It aims to bring new standards of professionalism to dispute resolution system design and evaluation. Its mission is:

[t]o be an accessible, expert and innovative organisation that improves the quality of decision-making about courts, non-adversarial forms of justice and alternative dispute resolution processes, by ensuring that evaluation and research takes place with a professional engaged focus within a recognised Centre of Excellence and by providing high quality teaching in key areas.

1.8. ACJI creates a Project Team for each project in which it is involved. The Project Team for this Project is described in Appendix A. The team for this Project included:
Self-Represented Litigants – Gathering Useful Information

Chapter 1 – Background and Methodology

- academics and researchers with formal qualifications in law as well as other disciplines; and
- independent consultants associated with and engaged by ACJI with legal and statistical experience in government and legal system evaluations.

Project Outcomes

1.9. This Report is intended to underpin further work on the prevalence of SRLs (and ‘unrepresented’ litigants) in courts and tribunals across Australia both federal and state to enable the Attorney-General’s Department to:

... identify the unmet legal needs for SRLs, in order to more effectively administer its financial assistance scheme.

1.10. The deliverables for the Project are:

- a literature review of studies that have been conducted about SRLs in Australia over the past 15 years;
- identification of what, if any, data is collected about SRLs by courts, tribunals, legal assistance centres or other bodies;
- analysis of the quality, comparability and comprehensiveness of data across different bodies; and
- recommendations on how to progress and enhance data collection about SRLs to enable regular reporting on them to occur in the civil justice system.

Methodology

1.11. As the first step of this Project, Australian reports and information about SRLs from the past 15 years were explored and analysed. Within the Project time frame, a more limited review of the overseas literature was conducted. Relevant studies were referred to, and a number of findings were made about the available literature in this area. The resulting Literature Review was then published, circulated and made available to a number of organisations as well as being posted on the ACJI website on 24 May 2012.1 Comments were sought from key stakeholders about the available literature. Associated findings from the Literature Review are detailed below. In addition, a select bibliography was compiled throughout the duration of the Project (see Appendix B).

1.12. The full Literature Review is divided into a number of sections comprising:

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1.13. Following the detailed Literature Review, recurrent issues arising from past studies on SRLs were identified and used to prepare a structured questionnaire (Appendix C). The structured questionnaire is referred to in this Report as the ‘Survey’. The Survey comprised a questionnaire conducted by telephone of all Commonwealth tribunals and courts seeking information on the content of SRL data-sets. The Survey was conducted by senior researchers engaged by ACJI who contacted relevant courts, tribunals and agencies, including Legal Aid and PILCH services. A list of all groups contacted is located in Appendix D.

1.14. The Project Team received responses from nearly all courts, tribunals, Legal Aid organisations, Public Interest Law Clearing Houses (PILCHs) and community legal centres operating in the federal civil justice system that were contacted for information and interviews. Those that do not provide support to SRLs in terms of litigation or potential litigation issues were not contacted, although the Project Team notes that those who provide Dispute Resolution services outside the litigation area (for example, the Financial Ombudsman service) are also interested in this Report and the findings made. A full summary of the survey findings is located in Appendix E, and these findings are also explored in Chapters 2 and 3 of this Report.

1.15. An initial question concerned the definition of an SRL, which is discussed later in this Report. However, the Project Team considers that the expanded and more recent definition adopted by the Canadian Forum on Civil Justice enables a more complete mapping of this population than the more narrow definition used more than a decade ago in Australia:

Litigant in person (unrepresented litigant) is an applicant or a respondent with a family law matter, on track to appear in a court room in ancillary proceedings, who has given his or her own address for service on documents filed with the Family Court or Magistrates Court: see Family Law Council, Litigants in Person: A Report to the Attorney-General prepared by the Family Law Council. (Canberra, August 2000).

Self represented litigant: anyone who is attempting to resolve any component of a legal problem for which they do not have legal counsel, whether or not the matter actually goes before a court or tribunal: see Canadian Forum on Civil Justice, Alberta Legal Services Mapping Project,
An Overview of Findings from the Eleven Judicial Districts Final Report
(Canadian Forum on Civil Justice, July 2011).

1.16. There was a considerable level of interest in the subject matter of
SRLs and a general enthusiasm to contribute to the Project. Many
organisations interviewed wanted to improve their response to SRLs and
saw data collection as an integral part of this improvement.

1.17. A series of less formal interviews were conducted in the course of
personal meetings with representatives of Victorian state courts and
state government agencies. These discussions assisted the Project Team
in providing a point of reference in evaluating the structured interviews.
The Project Team was highly appreciative of the people who gave their
time and assisted the Project with both, particularly given the restricted
time frame within which the Project was conducted. There was a very
small number (3) of Legal Aid agencies that were not able to be
contacted or did not respond to requests for information.

1.18. One aim of the Project was to uncover relevant variables from the
available data-sets and to map their incidence across jurisdictions.
Courts, tribunals and government justice departments reported differing
views on the drivers of the SRL phenomenon, which are reflected in data
collections. Data-sets are accordingly somewhat unique; however, the
aim was achieved and the results appear in the Report.

1.19. In the course of the Project, it was observed that, in some
jurisdictions, the need to collect even basic descriptive data is not
recognised or resourced and data-sets are limited to information that is
of immediate importance to the data collector (‘purpose-driven
collections’). Information about SRL characteristics, such as literacy,
ethnicity or language competency, is available in one-off studies or
collected by agencies that are running specific programs for SRLs and are
collecting data for program evaluation purposes. Most of the information
collected in ongoing data collections relates to process issues that are
perceived to be critical to the running of the court or tribunal. In dealing
with this issue, the Project Team tailored the Survey and grouped
agencies and the results according to the responses.

1.20. The Project also sought to identify consistencies and differences
between the different Commonwealth registries that relate to or operate
within the Commonwealth Attorney-General’s Portfolio, including
anomalies in the collection of the demographic profiles of SRLs, the
issues faced by SRLS, data classifications and even simple descriptors
such as family names in IT systems. This objective was less successful in
terms of obtaining IT ‘data dictionaries’ largely due to the project time
frames, a lack of understanding about what a ‘data dictionary’ is, and a
clear need to further investigate how these are kept in individual
registries.
1.21. A basic analysis of each data-set from a statistical perspective was made. This had a number of exploratory aspects, for example:

- What type of data is collected – nominal, ordinal or interval, given that each of these on its own has assumptions and limitations?
- When is the data collected given the breadth of the justice system and what differences will be evident at different stages? For instance, reported findings from the beginning of a dispute resolution process involving individuals who have made contact with a Legal Aid office should not be conflated with similar data collected at the time of hearing when circumstances or, if the data is ordinal, attitudes may have changed.
- How the data-set address the question, if at all, that is, what is the scope and nature of the gap between ‘met legal needs’ and ‘unmet legal needs’?
- The considered views of each of the registry representatives on the adequacy and interpretation of the data including their articulation of the underlying assumptions upon which the data-sets are based.

1.22. In summary, the task of the Project has been to perform a comprehensive scan of the available information on SRLs in Commonwealth civil court and tribunal jurisdictions and to identify any gaps in data collection in order to inform future SRL work by the Attorney-General’s Department. ACJI has identified what and where the data is held, its value and significance in meeting the longer-term objectives of the Attorney-General’s Department, together with recommendations towards the future development of Australia-wide, consistent evidence-based measures.

Themes from the Literature Review

1.23. When reading the Literature Review, it is necessary to bear in mind that the Review reveals that many of the findings discussed originated from data, evaluations and research that may be outdated and of limited reliability. The statements made in the Literature Review are necessarily couched in general terms and have been used to highlight the themes arising from the literature. It is difficult to draw conclusions about the reliability or comparability of the findings.

1.24. As noted in the Literature Review, from the mid-1990s, a number of government committees have examined Legal Aid funding and access to justice and the relationship between these issues and self-

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2 See definitions of these terms at [http://www.csse.monash.edu.au/~smarkham/resources/scaling.htm](http://www.csse.monash.edu.au/~smarkham/resources/scaling.htm)
representation. In the 2009 Report of the Senate Legal and Constitutional Affairs References Committee, *Access to Justice*, recommendations were made regarding the need for courts to collect data on SRLs.

1.25. In addition, in the late 1990s, there was a series of studies conducted as part of the *Review of the Federal Civil Justice System* by the Australian Law Reform Commission that reported on numbers of SRLs in the Administrative Appeals Tribunal (AAT), the Federal Court and the Family Court. The level of information about each court varied in detail, with more information about SRLs available in the AAT and the Family Court compared with the Federal Court. The search for literature on SRLs in Australia did not reveal detailed recent Australian research on SRLs, with the most recent in-depth research being completed in approximately 2004, apart from evaluations of the Self Representation Service in Queensland.

1.26. Aside from these inquiries at the government and law reform level, the information on SRLs in Australia is found in two main sources: (1) one-off studies and reports generally commissioned by individual courts or other interested bodies; and (2) data collected by courts and reported

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5 The following recommendations were made in relation to SRLs:

- **Recommendation 16** - The committee recommends that the federal, state and territory governments commission research to quantify the economic effects that self-represented litigants have on the Australian justice system, including court, tribunal, other litigant, legal aid system and social welfare system costs.

- **Recommendation 17** - The committee recommends that the federal courts and tribunals should report publicly on the numbers of self-represented litigants and their matter types, and urges state and territory courts to do likewise.

- **Recommendation 18** - The committee recommends that the federal, state and territory governments jointly fund and establish a comprehensive duty solicitor scheme in identified high need areas throughout Australia with a view to reducing the length of litigation and increasing judicial efficiency in self-represented matters.

- **Recommendation 19** - The committee recommends that judicial and court officers receive training in relation to assisting self-represented litigants.


in Annual Reports. The major findings from these studies and reports are outlined below.

1.27. Although the issues that can be raised by SRLs have been the ongoing subject of discussion and review in Australia, the evidence base to support the understanding of the phenomenon is limited.

1.28. Further, courts and tribunals are likely to limit their data collection to data that is relevant to the needs of their court operations rather than collecting a broad range of data on SRLs. One particular difficulty arises where a litigant’s representation status changes throughout the course of a case (sometimes numerous times), which is difficult to record without a sophisticated case management system.\(^8\) Generally, the current status is visible in the case management system, but a history of representation may only be evident on the hardcopy court file. Where data is collected, reliability may be an issue.\(^9\) Some courts have resorted to other ways of gaining supplementary information regarding SRLs through user or client surveys and management systems that allow a client’s progress for each visit to court to be tracked.\(^10\) However, there is almost no recent qualitative data about SRLs that can assist to explain how they experience the justice system.

1.29. The mapping, exploration and articulation of SRLs is complicated by inconsistencies in definition. The inconsistencies appear to be due to the differing motivations and requirements of those collecting data and reporting on SRLs in different countries and jurisdictions.

1.30. In light of the above statements on the nature of the findings contained in the Literature Review, the following themes have been elicited therefrom.

**Broader Issues about the Definitions of SRLs and the Reasons for Self-Representation**

- There does not appear to be a consistent definition of SRLs, with some jurisdictions making a distinction between litigants who are self-represented by choice and those who are self-represented due to circumstances beyond their control (see para 1.14 Literature Review).


\(^9\) Federal Court of Australia, *Annual Report 2010–2011* (Canberra: Federal Court of Australia, 2011), 43. In the Family Court of Australia, the Federal Court of Australia and the Federal Magistrates’ Court of Australia, the case management system Casetrack should allow for data to be extracted on SRLs. However, the recording of SRLs in this case management system is not a mandatory field so the statistics may not be reliable.

SRLs may choose to be self-represented and have a right to be self-represented if they choose to do so (see para 2.3 Literature Review).  

There are a number of reasons why a person may be self-represented, including reasons associated with their background and experience or because they cannot afford legal representation (see para 2.1, 2.6 Literature Review).  

The availability of Legal Aid has been said to be a determining factor in family law, yet the available data suggests that this may not have influenced the number of SRLs and that other factors may be responsible (see para 2.6 Literature Review).  

Although there is very limited data about what happens within the civil court and tribunal system, there is almost no coherent information about self-representation outside the court and tribunal system and in the broader justice system (that includes ADR schemes and processes) (see para 2.4 Literature Review).  

The Significance of Self-Representation  

There is a widespread perception evident in the literature on SRLs that numbers of SRLs are increasing in Australia and that this is due to increased legal costs and changes to Legal Aid funding (see para 2.1 Literature Review).  

Some literature suggests that the Australian legal system is ill-equipped to deal with SRLs and is reportedly an alienating environment for many SRLs. This literature suggests that much of the Australian litigation system is based on a bedrock of professional legal services and many SRLs could find themselves at a disadvantage in terms of adequately  

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11 Cachia v Hanes (1994) 179 CLR 403; s 78 Judiciary Act 1903 (Cth).  
12 John Dewar, Barry Smith and Cate Banks, Litigants in Person in the Family Court of Australia – Research Report No 20 (Family Court of Australia, 2000), 11-12.  
13 Senate Legal and Constitutional Affairs References Committee, Access to Justice (Canberra: Commonwealth of Australia, December 2009). Senate Legal and Constitutional Affairs References Committee, Inquiry into the Australian Legal Aid System: First Report. (Canberra, Commonwealth of Australia, 26 March 1997); Senate Legal and Constitutional Affairs References Committee, Inquiry into the Australian Legal Aid System: Second Report. (Canberra, Commonwealth of Australia, June 1997); Senate Legal and Constitutional Affairs References Committee, Inquiry into the Australian Legal Aid System: Third Report (Canberra, Commonwealth of Australia, July 1998); Senate Legal and Constitutional References Committee, Inquiry into Legal Aid and Access to Justice, June 2004. It was noted in Australian Law Reform Commission, Managing Justice – A review of the Federal Civil Justice System Report No 89 (Canberra: Australian Government Print Services, 2000) that there was no clear statistical data to support the claim that SRLs were increasing. However the Law Council of Australia, Erosion of Legal Representation in the Australian Justice System Research Report (February 2004) found that there had been a rise in SRLs based on a survey conducted and some statistical data. This finding can be contrasted with an earlier report, Family Court of Australia, Self-represented Litigants – A Challenge Project Report December 2000-December 2002 (Family Court of Australia, 2003), 3 where it was reported that the numbers of SRLs who are unrepresented throughout the entire court process are low.
understanding court procedures, rules of court, the language of the law and in representing themselves in courts.\textsuperscript{14} However, it remains unclear if SRLs are disadvantaged because the legal system is poorly designed to accommodate them or if the difficulties arise due to the characteristics of the litigants themselves.\textsuperscript{15} There is also almost no information about how SRLs engage in other court and non-court processes such as ADR (see para 2.4 Literature Review).

- The impact on the SRL and the system of self-representation will vary depending on the nature of the dispute, the relationship between the parties, the formality of the proceedings or the venue in which the matter is being heard, the existence of special arrangements for SRLs and the competence of the individual SRL to engage in the dispute resolution process (see para 1.10 Literature Review).\textsuperscript{16}

- There are perceptions evident in the literature that SRLs are problematic for courts (but less so for tribunals where processes may be more likely to have been adapted for SRLs), because these litigants may require more court time, be more likely to require a hearing, lead to increased costs for all parties, and place additional onerous obligations on judicial officers when dealing with SRLs (see para 2.2 Literature Review).\textsuperscript{17}

- SRLs may change status throughout court, litigation and dispute resolution processes and an SRL may be represented or self-represented at different stages of proceedings (partial representation). Some disputants may use ‘unbundled’ legal services and receive external support at different points during the life cycle of a dispute or may access self-help services (including via the internet). Ordinarily, a court or tribunal will not require this information unless it has an impact on specific processes (see para 1.7 Literature Review).

\textsuperscript{14} Duncan Webb, ‘The right not to have a lawyer’ (2007) 16 Journal of Judicial Administration 165.
\textsuperscript{15} Duncan Webb, ‘The right not to have a lawyer’ (2007) 16 Journal of Judicial Administration 165.
\textsuperscript{16} Richard Moorhead and Mark Sefton, Litigants in person. Unrepresented litigants in first instance proceedings. Department of Constitutional Affairs Research Series 2/05 (United Kingdom, 2005), 1.
\textsuperscript{17} Family Court of Australia, \textit{Self-represented litigants: A challenge – Project Report December 2000-December 2002}. (Family Court of Australia, 2003); Law Reform Commission of Western Australia, \textit{Review of the criminal and civil justice system in Western Australia – Final Report Project 92} (Law Reform Commission of Western Australia, 1999), 153.
The Impacts of Self-Representation

- The literature suggests that, in some circumstances, the outcomes for SRLs are not as good as for those with representation (see para 2.9 Literature Review).

- The complexity or non-complexity of court processes and the nature of the subject matter of litigation may have an effect on outcome and the incidence of SRLs (see para 1.10, 2.9 Literature Review).

- There is little, if any, attention paid to the parameters and processes in the broader justice system that extends well beyond litigation systems and includes the much larger Alternative Dispute Resolution (ADR) system (see para 2.4 Literature Review).

- There have been a number of programming and policy responses to SRLs, including increased assistance and written information for SRLs (for example, the outreach services provided at the AAT), development of self-help services (including Internet-based resources, online videos, offline videos), legal advice services, bench books for judicial officers and the commissioning of a small number of studies on the impact of SRLs. Legal Aid funding has also been supported for certain types of hearings, and pro bono service support is a feature of some courts and tribunals (see para 2.12 Literature Review).

- The experiences and the perceptions in Australia regarding SRLs is similar to overseas experiences in the United Kingdom, New Zealand, Canada and the United States (see para 2.1, 2.15-2.16 Literature Review).

Available Data and Data Collection Practices Relating to SRLs

- A number of reports in the Literature Review identified the need for reliable, consistent data on SRLs in order to identify trends, the extent of SRLs and their impact to support the development of appropriate options (see para 3.3-3.5 Literature Review).

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19 Senate Legal and Constitutional Affairs References Committee, Access to Justice. (Canberra: Commonwealth of Australia, December 2009), 92; Law Reform Commission of Western Australia, Review of the criminal and civil justice system in Western Australia – Final Report Project 92 (Law Reform Commission of Western Australia, 1999), 154; Australian Institute of Judicial Administration and the Federal Court of Australia, Forum on Self–Represented Litigants (Sydney, 17 September 2004).
Data on SRLs is scant in ongoing data collections, and some of the data discussed in the literature was somewhat dated (see para 4.2 Literature Review).

The available data on SRLs predominantly was found in one-off studies of SRLs rather than ongoing data collections held by courts, tribunals, legal aid or other organisations. One-off studies were more likely to collect data on a broader range of issues impacting on SRLs. Ongoing data collections on SRLs in courts and tribunals were generally limited to numbers and types of matters (see para 4.1 Literature Review).20

The Literature Review identified numerous gaps in the data collected on SRLs in Australian courts and tribunals, both as reported in the literature and from the fact that literature has not been found with expected reported data (see para 4.1 Literature Review).

Courts were generally supportive of the need to collect data, but there was a lack of knowledge around what data to collect and how to collect in light of the constraints of the particular case management systems (see para 3.5 Literature Review).21

As the impact of self-representation depends on characteristics of the case, the need to collect the information is often not a priority at the start of the proceedings when initial data is collected. It may be hypothesised that this is why the literature reports such scant collections despite the literature also suggesting that the remedy lies in the collection of a more comprehensive set of information variables (see Executive Summary, Literature Review).

There are a range of desirable data variables arising from the literature on SRLs, which fall into three groups:

1) Individual or demographic characteristics that influence representative status

2) Case characteristics that dictate whether or not representative status will be significant to the processes used, the outcomes and the impact on the court or tribunal

3) Court and tribunal processes that may be impacted upon or that highlight a need for accommodation to different representative statuses (see para 4.4 Literature Review).

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• Numbers of SRLs are reportedly greater than in previous decades in all Commonwealth courts and tribunals with proportions ranging between 17 and 93 per cent depending on a number of factors that include, but are not limited by, the nature of the case, the informality of the forum and the availability of funded legal resources. Perceptions of an increase may be greater than the reality (see Executive Summary, Literature Review).

• Previous studies and data collected by courts and tribunals indicated that SRLs were likely to have certain demographic characteristics relating to gender, age, employment, income status, party type; more likely to be involved in certain types of matters in the different jurisdictions; have different outcomes and duration of cases; and self-representation could affect or impact on the SRL, the other opposing (represented) party, and the court or tribunal in different ways (see Chapter 3, Literature Review).

• A range of policy responses may have had an impact on both the number and proportion of SRLs and the engagement with and impact on courts and tribunals (see para 2.12-2.14 Literature Review).

Development of the Survey

1.31. As noted above, the questionnaire or survey was developed based on the themes contained in the Literature Review. The questions asked of interviewees were therefore based largely on the available information on SRLs, which was frequently from one-off studies that had been conducted of SRLs in the preceding 15-year period, government reports and other policy or best-practice documents that had explored issues relating to SRLs.

1.32. The Survey had three sections:

• Section One – Opening questions as well as open-ended general questions about how the court, tribunal or organisation defines SRLs and what studies have been conducted by the organisations on SRLs.

• Section Two – Core questions – Yes/No questions about what data the courts and tribunals collect at the start, during and at the end of a matter and how this data was recorded, whether on an IT system, hardcopy file, survey or other method.

• Section Three – Finalising questions – Open-ended general questions about what data should be collected about SRLs.

1.33. The questions asked in Section One were:

• Do you collect a lot of data or any data at all about self-represented litigants in your civil jurisdictions?

• Do you have a working definition of self-represented litigants? Including whether a distinction is made between unrepresented or deliberately self-represented and whether a distinction is made between representations ‘on the day’ and where a person has papers prepared for
them and this is noted on the file but no representation turns up on the
day?

- Have you had any studies done in the last 5 years by outside or internal
teams on SRLs?
- Do you undertake an annual or regular survey on user satisfaction and
does it ask people if they represented themselves?
- Do you have any special programs or arrangements for SRLs or do you
have any planned?
- Do you ask people attending the court, and in particular SRLs, how long
the dispute had been going on before the case was started in the
court/tribunal and do you record the answer?

1.34. The questions asked in Section Two were:

- Is self-representation recorded? And is the party that is self-represented
recorded? That is, defendant, plaintiff, if the party is an individual or a
company.
- Is the type of matter recorded? For example, Family, Migration, Child
support, Unlawful discrimination etc.
- Is the procedure used recorded? For example, mediation or other
processes.
- Is help for SRLs recorded? For example, court appointed, legal aid,
private, none, pro bono, amicus curiae (friend of court), McKenzie friend.
- Are the reasons for non-representative status recorded? That is, cost,
knowledge, language, deliberate decision, income – can’t afford it or too
expensive, complexity of case, other, conflict with lawyer.
- Are changes in representation collected?
- Are reasons for changes in representation collected?
- Do you collect information on self-represented litigants in relation to the
running of the court? This includes information on elapsed time and
whether an attendance index for self-represented litigants was kept.
- Is there interpreter data? Including whether the interpreter was a
professional, a family member, the interpreter language, English
proficiency of the SRL and the main language spoken at home.
- What demographic data is collected? Is information collected on factors
such as education level, economic, socio, business/industry, age, gender,
literacy, geographical locations, whether the person was from a culturally
and linguistically diverse background, Aboriginal or Torres Strait Islander
status, ethnicity, income status and/or concession card status?
- Do you collect data on case outcomes that could be linked to SRL status?
- Do you collect information on case complexity that could be linked to SRL
status?
• Do you collect data on the number of court appearances that the SRL attended?
• Do you collect any data on case duration and how active the SRL was in the case?

1.36 The questions asked in Section Three were:
• Is there any data not mentioned here that you think should be collected?
• What is the most important data that should be collected?
• Do you have a list of field names that you use in your IT system? Could we have a copy of it?
• Any other problems the court faces regarding data collection on SRLs? For example, consistency of data entry by staff.
• Is there anything you would like to add? For example, about the capacity of the court to collect data and the factors impacting on the ability to collect or not collect data such as human resources and IT resources.

1.37 The questions and responses to Sections One and Three of the survey are summarised and analysed in a qualitative analysis presentation in Chapter 3 of this Report. The responses provided in respect of Section Two are discussed in Chapter 2 of this Report.
2

Data about Self-Represented Litigants

Introduction

2.1 This Chapter considers and reports on the overall findings with regard to the specific data collection practices of the surveyed justice agencies (see Section Two of the Survey). Not all justice agency responses were comparable as a result of the different nature of work conducted by each organisation. Therefore justice agencies were grouped by function into:

- Court/tribunals
- Assistance agencies with two defined sub-groups:
  - PILCHs or other community legal service organisations, and
  - Legal Aid organisations.

2.2 As noted previously, those agencies operating outside the state-supported litigation system, such as providers of external dispute resolution (EDR providers, for example, the Financial Ombudsman Service) or providers of other ADR services, were not surveyed.

2.3 Although there are some broad findings from agencies interviewed to allow a cross-jurisdictional, Australia-wide assessment of data collection practices, the conclusions arising from these findings are of limited value when comparing agencies. The reasons why some agencies collect data, and others do not collect information, need to be considered. In particular, it should be borne in mind that there are generally very good reasons why some justice agencies may not collect certain data.

2.4 As the survey questions derived from the Literature Review were mostly derived from issues examined in one-off studies of SRLs, it may be unrealistic or inappropriate to expect that courts or tribunals would collect data on the broader issues relating to SRLs. It is probably useful to consider information in the context of three different categories:

- Monitoring information – which can help with day-to-day monitoring and assist to track patterns and issues
- Evaluation reporting – which may involve an analysis of monitoring information and data and may also include more targeted short-term research
- Research information or reporting – which may be supported by monitoring and evaluation information and may be supplemented by longer-term qualitative and quantitative information, longitudinal analysis and research across and within systems.

2.5 It might be expected that courts and tribunals would collect data about some identified SRL issue areas that fall into the ‘monitoring’ category. However, there are some issues that are not the subject of any consistent data collection. For example, it could be expected that data would be kept about partial representation or changes in represented status at different stages of a matter, yet this is normally not the case.

2.6 The quantitative data presented in this Chapter represents the answers to Yes/No questions used in the Survey. Further material provided in interviews from Sections One and Three of the Survey is provided in Chapter 3 of this Report. This material is presented in the following order:

- Overall findings about courts and tribunals
- Findings comparing justice assistance agencies.

2.7 The Courts that were contacted and interviewed included:

- The High Court of Australia
- The Federal Court of Australia
- The Family Court of Australia and Federal Magistrates’ Court.  

2.8 The Tribunals that were contacted and interviewed included:

- The Administrative Appeals Tribunal of Australia
- Fair Work Australia
- Migration and Refugee Review Tribunal
- National Native Title Tribunal
- Social Security Appeals Tribunal
- Veterans’ Review Board
- Superannuation Complaints Tribunal.

2.9 Because agencies such as PILCHs, community legal centres and Legal Aid organisations do not normally collect the types of data referred to in Section Two of the Survey, only limited comparisons can be made with these types of organisations. There was only one key body in each of the assistance agency sub-groups of PILCHs and community legal centres and Legal Aid organisations that kept substantial data on SRLs. These two agencies, Queensland PILCH and Legal Aid NSW, kept more data because special programs were being run by those organisations targeting SRLs that were being evaluated for funding purposes.

Major Findings

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Information about the Federal Magistrates’ Court was obtained from the Family Court representative.
2.10 The major findings were as follows:

- Courts and tribunals collect limited information that specifically relates to SRLs. However, some agencies could create reports on SRLs if required, by linking the fact of no legal representation with other data variables that were collected in the case-management system, for example, by linking to data relating to case outcome, case duration and elapsed time.

- Most courts determined SRL status by the fact that the person did not have legal representation. As far as it could be determined, it was only the Federal Court of Australia that had a specific field for SRLs, but this field was reported as not consistently being used by personnel entering data.

- The main reason given by most courts and tribunals for recording representation was for the purposes of communication and in order to direct information from the court or tribunal to the correct person, usually included in a legal representation field. In most courts and tribunals, this information does not appear to have been collected for the purposes of collecting data about SRLs. Thus SRL status can be deemed but may be unreliable and inconsistent.

- Many tribunals also deemed someone to be a SRL by the fact that legal representation details were not entered into the case-management system. Other tribunals had a presumption of self-representation and thus did not record SRL status per se; rather, they were more likely to record numbers of cases where the litigant had legal representation.

**Overall Findings about Data on SRLs in the Federal Civil Justice System Across All Justice Agencies**

**Routinely Collected SRL Data in the Main Data Groups Collected by Assistance Justice Agencies**

2.11 As noted, a number of Legal Aid agencies did not respond to requests for information; however, for those that did, SRL data generally was reportedly not collected. However, Legal Aid NSW was conducting programs in specific jurisdictions related to SRLs, and data was being collected for the purposes of evaluation of those programs at the time of the Survey. In other legal aid agencies limited information was collected in hardcopy by duty lawyers at court and little routinely collected information was available. In addition, once aid had been refused, persons attending court or requiring assistance were not tracked.

2.12 PILCH programs as well as community legal services collect more detailed information and are discussed below.

**Routinely Collected SRL Data Collected by Court and Tribunal Agencies**

2.13 The graph below sets out the court and tribunal responses and the range of data collected, highlighting the differences revealed in the survey processes. The
surveyed data groups, (12), shown in the graphs below and derived from the themes evidenced in the Literature Review are:

- Specific SRL data distinguished and kept
- Type of help provided to the SRL
- Type of matter
- Procedure used
- Frequency of attendance (Appearance Index)
- Case duration/complexity as it relates to SRLs
- Demographic information
- Changes in represented status throughout the matter
- Reasons for SRL status
- Interpreter data
- Impact of SRL on processes
- Case outcomes.

2.14 Of the ten courts and tribunals surveyed, there was significant variation in the extent of data collected. This graph should be read in context with the descriptions of the individual collections given below, particularly given disparities in the legislative frameworks governing representation and in the respective size of the agencies. For example, the Veterans’ Review Board limits legal representation and caters to SRLs and those helping them (traditionally, service organisations). It also has a relatively small caseload, enabling the collection of different categories of information.

2.15 The Family Court and Federal Magistrates' Court collected the most data sets (in respect of the twelve groups). In Figure 2.1 and 2.2, ‘partial data-sets’ reflect the situation where agencies collect some data on a topic (such as some demographic data or interpreter data) but do not collect the complete set of information about that issue.
2.16 The figure above shows the numbers of courts and tribunals collecting data by the type of data relevant to SRLs and in the issue areas referred to in the literature. Nine of the ten courts and tribunals collected specific data, however as noted earlier, this reflects generally a determination of SRL status...
by most agencies by virtue of whether the legal representation field in case management system is filled in. Nine agencies also collected data on the procedure used.

2.17 Four agencies collected specific data on the impact of SRLs on the court or tribunal processes (‘process impact data’). None collected information about the reasons for SRL status (except occasionally in an ad hoc fashion on the hard copy file). A number, such as the Federal Court and the AAT, do collect some information on the type of (non-legal) help that SRLs use during court and tribunal processes on the IT case management system. Nine agencies had partial data-sets on demographic data, reflecting that no agencies collected the full set of demographic data (see Figure 2.8 for the range of demographic variables) but collected some data. The data that was collected was that most significant to the agency (such as location, age and gender, concession card status). Partial data was also collected by eight agencies in relation to interpreters (see Figure 2.9).

2.18 It should be noted that some agencies indicated that information about SRLs might be noted on the hard copy file if it was deemed relevant but that there was no consistent approach in those agencies. As is evident in Figure 2.3, information about the type of legal assistance, such as whether a person was legally aided, had private representation, pro bono or court appointed was not relevant to many agencies. Rather the issue was whether the person had legal representation, and if so, this was recorded on the hard copy file and the case management system.

2.19 If the type of representation was relevant to court process, then it was recorded. For example, in the Federal Court, if an order for pro-bono assistance was made under the Federal Court Rules, then this would be recorded. In the Social Security Appeals Tribunal a distinction is made between different categories of organisational representatives and individual representatives (see the Social Security Appeals Tribunal summary in Appendix E for a full description of these categories).
2.16 The type of data collected, with the exception of the one-off studies (many of which are conducted by external independent researchers) is largely nominal. This means that data is entered, and then subsequently (in a one-off study), counts are made of the incidence of that particular type of entry.

2.17 Courts and tribunals collected limited information that specifically related to SRLs. However, some agencies could create reports on SRLs if required, by linking the fact of no legal representation with other data variables that were collected in the case-management system, for example, relating to case outcome, case duration or elapsed times. The AAT, for example, is in the process of introducing new report generation capacity that could be applied in this way.

2.18 Some information is only recorded on the hardcopy court file and not simultaneously in the computer-based case management system. For example, information about history of representation was (in most agencies) only available on the hardcopy court file and therefore would only be available if hardcopy files were interrogated for that information. Generally, in Casetrack (used in most Commonwealth civil courts and tribunals), the representation field reports on current status, replacing previous information, and does not record the history of representation. However, the Family Court indicated that reports on history of representation if the Court required a report to be produced.

**Timing of Data Collection**

2.19 The Survey shows that data is not uniformly collected across all stages of the litigation process. Respondents were requested to identify collection items at the:
• start of the litigation process – usually issue of documentation and registration of the dispute;
• during the litigation process, including ‘events’ throughout the process, such as hearings, pre-trial process or chambers activities; and
• end of the process, including recording of the outcome and any post-action surveys.

2.20 The graph below shows that the bulk of data collected by courts and tribunals is at the start of the process with little data specific to SRLs collected in the latter stages of the case. Data collection occurred in the latter stages of proceedings only if a change occurred (the key data variable was a change in representation).

2.21 The vertical axis represents the number of yes responses (including ‘maybes’ and ‘conditional yes’s’) to the 55 questions in the Survey from courts and tribunals that have been cumulated to show the extent of activity at each stage of the litigation process. The modes of collection are also shown, namely whether the data was:

• Entered into an Information Technology system
• Recorded in writing on a hardcopy file or in documents filed and attached to a hardcopy file
• Obtained through an ongoing survey – usually a regular survey conducted by the court or tribunal. There is somewhat limited information about these surveys and they may not be linked to other data groups – for example, it may not be clear if SRLs are more or less likely to respond or whether or not those with particular demographic characteristics might be less likely to respond.
No Tracking Collections Identified Across Agencies

2.22 No system-wide tracking data collections were identified. That is, there was no collection that gathered, collated or matched data from the very first interaction that a person may have had with a legal assistance justice agency through to the final notification of a decision, settlement, or withdrawal at a court or tribunal. Some one-off surveys and studies were referred to or are currently underway that were attempting to undertake this type of tracking. It should be noted that such studies should be considered valid only if they are purpose designed and undertaken as tracking studies. Difficulties arise if similar data is conflated with later data when circumstances, or if the data is ordinal, attitudes may have changed. The challenges that a disparate set of data bases offer those seeking system-wide information are further discussed below.

Comparison with Literature Review Issues

2.23 Several issues that feature prominently in the Literature Review do not similarly feature in routine data collections. These include information about:
- the complexity of cases either resulting from SRL involvement or that are connected to SRLs;
- the impact on the process or resources of a court or tribunal of SRL interactions;
- changes in represented status or partial representation; and
- SRL outcomes compared with represented people.

2.24 Courts and tribunals reported that no SRL-related data was collected on case complexity. Attendance index data and elapsed time data were already collected for all cases, yet not specifically for SRLs. The AAT is in the process of obtaining the capacity to interrogate the case management system to make these linkages.

2.25 Importantly, six agencies reported that the outcome of cases could be linked back to SRL status and four agencies reported that case duration could similarly be linked.

2.26 The graph below shows the incidence of these four issues in the data collections.

Figure 2.5 – Is Data Being Collected About the Link between SRL Status and Impact and Outcomes?

2.27 The most significant mismatch in terms of the literature and the data collections is that, while judges and tribunal members may deal with SRLs in everyday proceedings and hearings, little information is collected on the impact of SRL status on their resources. That is not to say that no information is collected – one-off studies exist and some reports are planned.
2.28 A further observation is that the Survey did not uncover any collections of information about what occurred in ADR processes, court rooms and tribunal hearing rooms. In the literature, judges and magistrates indicate that the impact on court time is high.

2.29 Not surprisingly, even less information was available on the reasons for SRL status. However, many courts and tribunals do collect data on changes of status from represented to unrepresented in the course of a dispute, although as noted earlier, the IT case management systems will generally only reflect the current representation status of a person and to gain an understanding of the history of a person’s representation would require an interrogation of the hard copy file. Yet, some reservations were reported on the accuracy of this information. SRLs may not necessarily change ‘on the record’; however, it may be that legal representatives are no longer acting. Similarly, the Victorian Magistrates’ Court reported that insurer cases were notoriously unreliable in terms of representation notifications with insurers often not determining whether or not to assume liability until well after the case had been started. Up to 70 per cent of cases fell into this grouping.

Figure 2.6 SRL Status Changes

2.30 The literature suggests that a major reason for the paucity of data is functional. This was also borne out by comments made by court and tribunal representatives. That is, data is collected if it is useful for the management or execution of the functions of the Justice Agency. This data usually takes the form of a set of data collected in a single instance, which is then used to support decisions or to initiate processes. The graph below represents data that is taken from legal representation notifications on initiating process documentation. As noted earlier, in most agencies SRL status is recorded by deeming a person to be an SRL if they do not have legal representation. The purpose is to provide a contact point to enable the
court and tribunal to forward information about case events and documentation – not to measure the impact of SRL status. Most agencies also record whether the SRL is a plaintiff, and less if a defendant (these numbers reflect the differences in jurisdiction – whereby in some tribunals defendants will be government departments or other agencies). Nine agencies collect data about the procedures used and this can be linked to SRL status if required. Eight agencies collect data about the matter type.

Figure 2.7 Case-related Data Incidence

2.31 Similarly, demographic data that is not essential to this purpose (that is, for the purpose of obtaining contact information) is not generally collected. Thus the most commonly collected items in relation to demographic data were location (that is, registry location where matter initiated or address for service), age and gender and concession card status (collected as part of fee-waiver or reduced fee applications). Some agencies reported a limited number of other demographic variables were collected that are more specific to the jurisdiction and are not reflected in the graph below – such as place of marriage in the Family Court or Federal Magistrates’ Court or special needs or international case at the Social Security Appeals Tribunal.
2.32 These graphs indicate that data that may support SRL issue exploration is somewhat limited in courts and tribunals. The justice assistance agencies tasked with providing services directly to SRLs who may progress through the court and tribunal system are more likely to collect more detailed demographic information. This can be done to enable decisions to be made about which resources should be offered at various stages (i.e., ‘shepherding’, information collation, or pro bono barrister services), and cumulatively for the purposes of better tailoring future services. Queensland PILCH has indicated that this reflects the nature of their data collections, although this type of collection is not conducted through usual day-to-day monitoring but under the auspices of research and evaluation work. Data of this type is more likely to be demographic or about the services already available to SRLs such as interpreter services. Figure 2.9 reflects the finding that six agencies collect interpreter data, with three agencies recording whether the interpreter was a professional interpreter and four agencies collecting information about the language used. Often information about interpreters is kept in a separate interpreter file or details of the use of interpreters are kept on the hard copy court file.
Observations about the Data

2.33 As noted above, the data collections of courts and tribunals are almost entirely purpose-driven. Collections are maintained for the purposes of the organisations keeping the data. For example, courts and tribunals require the contact details of the parties so that they may be contacted in reference to events in the running of the case or matter. Similarly, community legal services will maintain data collections that describe the demographic and socio-economic information of clients for the purpose of supporting submissions for ongoing financial grants.

2.34 Within the set of data collections, two sub-sets may be identified. The first of these is ‘pivot’ data (further defined below) or data supporting a single decision to be made by that agency and again within its purpose. The second is data that is kept at different times in the course of a matter and again used for the purpose of the collectors. For example, legal assistance agencies may collect data for the purposes of providing ‘alongside’ or ‘shepherding’ assistance. Legal Aid agencies may make ‘triage’ decisions about whether or not people will receive aid or in the superior courts whether or not matters should be streamed into specialist SRL programs.

2.35 A third sub-set of data that is not purpose-driven is by-product data. For example, as can be seen from the graphs illustrating data collection regarding processes, SRL data may be gleaned from the fact that no entry is made in the representative field of the case management system. The reliability of this information is questionable because the completion of additional fields indicating SRL status is not mandatory. In addition, the
various circumstances under which the representative field is maintained are not consistent across the courts and tribunals. Courts indicated that the actual status of the person and their relationship with any representative may not be reflected ‘on the record’. The graphs also show that the level of information collected deteriorates with the progress of the case. The by-product data must be viewed as less than reliable.

Findings About Assistance Agencies

Public Interest Law Clearing Houses and other Community Legal Services Bodies

2.36 The Public Interest Law Clearing Houses (PILCH’s) and other community legal services that were contacted and interviewed by the Project researchers, or who provided written information to the Project researchers, included:

- The National Pro Bono Resource Centre
- Queensland Public Interest Law Clearing House (QPILCH)
- Public Interest Law Clearing House Victoria (PILCH (Vic))
- National Association of Community Legal Centres (NACLC)
- National Indigenous Family Violence Prevention Legal Service
- Aboriginal and Torres Strait Islander Legal Services (Queensland) Ltd.

2.37 From the bodies in this sub-group that were interviewed, it was only QPILCH that was collecting significant data-sets or had conducted studies of its Self-Representation Service in the last five years.

Legal Aid Organisations

2.38 The Legal Aid organisations that were contacted and interviewed by the Project researchers, or who provided written information to the Project researchers, included:

- Legal Services Commission of South Australia
- Legal Aid NSW
- Legal Aid Commission of Tasmania
- Victoria Legal Aid
- Legal Aid ACT.

2.39 The following agencies were not able to be interviewed:

- Northern Territory Legal Aid Commission
- Legal Aid Queensland
- Legal Aid Western Australia.

2.40 The only agency that was collecting a broad range of data on SRLs was Legal Aid NSW, and again this was for evaluation purposes of pilot programs being run by Legal Aid NSW.
Gaps in the Data

2.41 The differing purposes of the organisations interviewed do generate different sets of information. The major observation is that there does not appear to be any consistent or streamlined method for sharing that information within the total group of courts and tribunals despite the one-off tracking studies noted above.

2.42 Discussions with some tribunals and courts supported the notion that, in some instances, more comprehensive (de-identified) data provided by other agencies may be useful for shaping SRL programs within courts and tribunals.

2.43 There are gaps in the data-sets from all agencies about what occurs at hearings and in dispute resolution processes. Judges and others have indicated in various papers and in some studies that the complexity and duration of matters may increase with SRL involvement. However, information about complexity is not linked to SRL status. Collections of this type might be undertaken in a variety of ways – for example, better records of court or tribunal timed events or requiring SRLs to provide more detailed information may trigger specific tracking systems within case management systems.

2.44 Importantly, six courts and tribunals reported that the outcome of a dispute could be linked back to SRL status to enable an analysis and comparison with represented litigants. While this is something that is generally not reported on, there is future potential to do so. However, the appropriate methodology for doing so would need to be explored with agencies.

Data Issues

2.45 The analysis has identified numerous gaps in the data collected on SRLs in Australian courts and tribunals, both as reported in the literature and from the fact that literature has not been found with expected reported data. Data collected on SRLs is limited in most Australian courts, and where it is collected, it is not consistent.\(^\text{23}\) The data collected and reported on SRLs is generally limited to numbers and types of matters.\(^\text{24}\)

2.46 Interestingly, there is almost no data collected about problems with SRLs in the court and tribunal system. For example, some SRLs are said to show unreasonable or difficult behaviours (and may not be declared vexatious) and can disproportionately consume hearing or court or tribunal administrative time. However, there is no data collected about this issue, and courts and tribunals are

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unable to indicate whether or not there may be a proportion or subset of SRLs who require more intensive resources (and may therefore find it hard to design strategies to deal with this subset or if a strategy is used to determine whether or not it is working).

2.47 There are also significant data gaps outside courts and tribunals that mean it is difficult to uncover how people enter the court system; how and on what basis they make decisions about representation; and whether or not they can be supported in some way if they are unrepresented in the broader justice system (including how they may use ADR processes). For example there is no information about the impact of litigation funding and pro bono services on decisions to commence litigation and those who are not successful in a legal assistance application or who receive ‘unbundled’ legal advice are not tracked. The utility of one off interventions in assisting people to resolve their disputes is not measured or shared within the system.

2.48 Within courts and tribunals, the lack of data collection has been attributed to difficulties within case management systems to record information on SRLs, failure by staff to record data consistently and inaccuracies in extracting data reports from the case management systems. Courts and tribunals have also reported uncertainty about what data should be collected.

2.49 Although numerous one-off studies in different jurisdictions, and the various reports cited above, have collected a broad range of data, these studies are now somewhat dated. The past research has highlighted the types of issues that arise in cases involving SRLs, yet the type of data that is in fact routinely collected by courts and tribunals is far more limited.

2.50 Better base data collection will enable more evaluation and research to take place as more consistent data will enable innovative programs to be evaluated, compared and extended and will support civil justice system objectives. This is discussed further in Chapter 4 of this Report.

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Chapter 3 – The Survey of Courts, Tribunals and Other Agencies

The Survey of Courts, Tribunals and Other Agencies

Introduction

3.1 The Survey of courts, tribunals and other agencies revealed that some organisations view SRLs as part of their usual business (essentially, it is presumed that people will be self-represented) and do not collect much data. Others consider that SRLs can have impacts on court and tribunal operations, but do not collect data because they do not have the mechanisms or infrastructure to do so. This section of the report considers the qualitative survey data collected in the interviews with courts, tribunals and justice assistance agencies.

Major Findings

3.2 The Survey established that data collections vary significantly. On the whole, courts and tribunals in the federal jurisdiction collect data that is limited by its relevance to the operational needs of the courts. There is a perception that broader information about SRLs is not required by the courts and would not be collected by a court unless it related to an operational need. In some instances, the information is contained and available in the case management systems. Reports could be extracted for a court or tribunal if a need arose, but generally it would be unusual to do so, and this may require changes to an existing or future IT system.

3.3 Tribunals tend to cater to SRLs. In many tribunals, to varying degrees, the presumption is that the person will be unrepresented and legal or other representation is not the norm. Accordingly, data is not on the whole collected about SRLs, because for many tribunals this is the core client base and is ‘business as usual’. However, many tribunals may have larger numbers of SRLs in some jurisdictions rather than others, and this internal difference is often not explored in the data-set (beyond recording basic differences – see below).

3.4 A number of organisations in the community legal service sector, such as the National Association of Community Legal Centres and the National Pro Bono Centre,
communicated to Project researchers that they do not collect data on SRLs or have a definition of SRLs.  

3.5 Most Legal Aid organisations do not collect information about SRLs except in relation to refusals for Legal Aid or duty lawyer services. Some Legal Aid organisations did not provide any services for civil matters. The exception in terms of data collection was Legal Aid NSW, which has a number of projects relating to SRLs and more data as a result.

3.6 In the next section, an analysis of the qualitative data collected in Sections One and Sections Three of the Survey is provided. These sections asked specific questions about SRLs and gave those surveyed the opportunity to give considered views on issues relating to SRL data in general. In Appendix E, a summary of the various collections agency by agency is presented.

**Questionnaire Section One – Qualitative Data Analysis**

**Definitions of SRLs**

3.7 Interviewees were asked:

Do you have a working definition of self-represented litigants? Including whether a distinction is made between unrepresented or deliberately self-represented and whether a distinction is made between representations ‘on the day’ and where a person has papers prepared for them and this is noted on the file but no representative turns up on the day?

3.8 No organisation that was interviewed had a working definition of an SRL. All courts interviewed did not have a working definition of SRL apart from the simple fact that, if legal representation was not entered into the case management system, then the person was deemed to be an SRL. In the Federal Court of Australia, a field for SRL existed; however, this field was not used consistently and was not considered reliable by the Federal Court for counting purposes. No tribunal had a definition of SRL, yet as noted previously, this lack of recording was influenced by the fact that in many agencies SRLs were the norm or presumed. For example, the AAT reported that approximately 50 per cent of all applicants to the AAT are self-represented, so a definition was not seen to be useful.

3.9 This lack of definition for SRLs was consistent with the findings in the Literature Review. However, to an extent, the interviews revealed some consistency of practice among courts and tribunals that SRL status was deemed by virtue of lack of representation. It is the view of the Project Team that lack of representation is not sufficient to ensure consistency of definition of SRLs for counting and monitoring

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27 The National Association of Community Legal Centres also informed researchers that no studies or surveys have been conducted of SRLs in the past five years by the organisation. But they informed the researchers that some community legal centres may have special arrangements in the form of community legal education for people representing themselves.
purposes and recommends that a definition be developed to be agreed upon by courts and tribunals that can then enable more consistent counting across agencies.

**Studies of SRLs in the Past Five Years**

3.10 Interviewees were asked:

Have you had any studies done in the last 5 years by outside or internal teams on SRLs?

3.11 Very few agencies had conducted studies in the past five years. The following information was provided:

- QPILCH included two research articles\(^{28}\) and an evaluation report.\(^{29}\)
- Fair Work Australia provided a literature review.
- The AAT completed a study in 2011 that was an ad hoc limited report of SRLs during 2011, giving tables and graphs. This was completed in order to compare findings with the ALRC file review study undertaken in 1997, which was a complete study. This internal report was not able to be provided to researchers at the time of the Project.

**Client or User Satisfaction Surveys**

3.12 Interviewees were asked:

Do you undertake an annual or regular survey on user satisfaction and does it ask people if they represented themselves?

3.13 The AAT, Migration Review Tribunal—Refugee Review Tribunal, the National Native Title Tribunal, Superannuation Complaints Tribunal, QPILCH, Legal Aid NSW and the Family Court of Australia all conduct client satisfaction surveys. There is some limited information in these reports on SRL status.

**Programs or Arrangements for SRLs**

3.14 Interviewees were asked:

Do you have any special programs or arrangements for SRLs or do you have any planned? (Note: The tables below paraphrase the responses in the right-hand column or quote answers directly).

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\(^{29}\) Cate Banks, ‘Evaluation of effectiveness of Queensland Public Interest Law Clearing House — Self Representation Service in Federal Court and Federal Magistrates Court Brisbane.’ (Cate Banks Consulting, June 2012).
### Table 3.1 Responses to Survey in Relation to Special Programs

<table>
<thead>
<tr>
<th>Justice Agency</th>
<th>Special Programs</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Court of Australia</td>
<td>Only the special provisions made for SRLs in the High Court Rules.</td>
</tr>
<tr>
<td>Family Court of Australia</td>
<td>Not explicitly however there is substantial information online. There has been a focus on improving access particularly for those court users with a disability. The ‘less adversarial trial’ program which is an attempt to make court more accessible is likely to assist some SRLs.</td>
</tr>
</tbody>
</table>
| Federal Court of Australia           | The Federal Court Rules make provision for assistance, and the matters the Court is to take into account in determining pro bono assistance for SRLs are:   
   (a) the means of the party  
   (b) the capacity of the party to otherwise obtain legal assistance  
   (c) the nature and complexity of the hearing  
   (d) any other matters the Court considers appropriate.  
   The Court has undertaken with Queensland PILCH a pilot to assist self-represented parties who come to Court. |
| Administrative Appeals Tribunal      | Brochures, website, communications and Outreach Process. In this process an AAT ‘case service officer’ contacts the applicant and explains what will happen, what is coming up in terms of timelines and events and will make an appointment with the Legal Aid on-site service and other areas for legal assistance.  
   Tribunal matters and SRL matters are handled quite differently. The first case event is a case conference that:  
   • explains the process  
   • provides guidance on the evidence to be collected  
   • organises an interpreter. |
| Fair Work Australia                  | FWA have recently completed a literature review on SRLs and will seek to take the project further during next financial year.                      |
| Migration Review Tribunal–Refugee Review Tribunal | General support arrangements exist – pre-hearing briefing with interpreters and all applicants entitled to the same support arrangements. |
| Legal Aid NSW                        | Pilot early intervention projects in Family Law are underway.                                                                                     |
| Legal Aid Commission of Tasmania     | Some SRLs may go to advice sessions run by Legal Aid in the Family Court or access the telephone service. However, these people may not be unrepresented; they may be simply seeking a second opinion. |
| Public Interest Law Clearing House (VIC) | PILCH runs shepherding programs for all courts including state courts, including information, navigation and information collation and in some instances pro bono |
### Justice Agency

<table>
<thead>
<tr>
<th>Justice Agency</th>
<th>Special Programs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Interest Law Clearing House (QLD)</td>
<td>As above, with a closer relationship with the state courts and with the courts making referrals.</td>
</tr>
<tr>
<td>National Association of Community Legal Centres</td>
<td>No, but some centres may have prepared community legal education for people representing themselves in some courts/tribunals/fora.</td>
</tr>
<tr>
<td>Aboriginal and Torres Strait Islander Legal Services (Queensland) Ltd</td>
<td>Will routinely refer a person to the Supreme Court SRL Service in QLD. However, ATSILS then shepherd the person through that or ‘work alongside’. In some circumstances, they will provide ‘assistance’ in the form of a law student about to be admitted as a lawyer. The legal service is not able to go on the record as a representative lawyer for that person.</td>
</tr>
</tbody>
</table>

#### Age of Dispute Prior to Coming to the Court/Tribunal

3.15 A question about pre-litigation or pre-filing activity was asked given that ‘early intervention programs’ have been mooted as useful in de-escalating disputes away from court or tribunal processes. Interviewees were asked:

> Do you ask people attending the court, and in particular SRLs how long the dispute had been going on before the case was started in the court/tribunal and do you record the answer?

3.16 All agencies answered ‘no’ to this question.

#### Questionnaire Section Three – Qualitative Analysis

### Views of Justice Agency Representatives About Data Adequacy

3.17 In Section Three of the Survey, interviewees were given the opportunity to express views on SRL data in general. Not surprisingly, the issues ranged across those already identified above both in the Literature Review and in the Quantitative Analysis – and mainly focused on the impact of SRL status on delays, resources, the type of assistance required and the specific programs that may be needed to support SRLs. Overall, the views provided show that different courts and tribunals place different priorities in terms of resources dedicated to SRL issues. However, all considered that more SRL data particularly from elsewhere in the system would be of assistance. There was a view, however, that obtaining some consistency between the data systems even to the level of field names would be challenging.

#### Table 3.2 Data not mentioned in Questionnaire that should have been collected

3.18 Interviewees were asked:

> Is there any data not mentioned here that you think should be collected?
<table>
<thead>
<tr>
<th>Justice Agency</th>
<th>Other Data that Should Be Collected</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Court of Australia</td>
<td>No. Data on time lapsed is important and HC can gather material on delay. The HC collects most of what the court needs.</td>
</tr>
<tr>
<td>Family Court of Australia</td>
<td>No</td>
</tr>
<tr>
<td>Federal Court of Australia</td>
<td>No</td>
</tr>
<tr>
<td>Administrative Appeals Tribunal</td>
<td>Yes, there is a perception that the AAT needs better data on how SRLs interact with the AAT. AAT is seeking to employ a data manager with report programming skills to extract more information. The case management system is not adequate for this. The new data manager will design reports and extract the data.</td>
</tr>
<tr>
<td>Fair Work Australia</td>
<td>There is no current move towards recording SRL status – but it is likely to arise in the future with a greater focus on access to the tribunal.</td>
</tr>
<tr>
<td>Migration Review Tribunal–Refugee Review Tribunal</td>
<td>No. The main data gathered is in relation to the percentage of people who are represented and not represented. At the MRT and RRT, the representative is able to send submissions, prepare correspondence and attend the hearing (although not all representatives attend the hearing), but is not allowed to speak for the applicant (no one is allowed to speak for the applicant aside from an interpreter). Representatives attend MRT–RRT community liaison meetings twice a year in every location where there is a registry – monthly sent newsletters are emailed to community liaison members, and the MRT–RRT website includes a separate page for representatives – no electronic lodgement yet although expected in 2012–13.</td>
</tr>
<tr>
<td>Veterans' Review Board</td>
<td>No</td>
</tr>
<tr>
<td>Legal Aid NSW</td>
<td>Tracking information following SRLs from Legal Aid to court.</td>
</tr>
</tbody>
</table>

Table 3.3 Most Important Data to Be Collected

3.19 Interviewees were asked:

What is the most important data that should be collected?

<table>
<thead>
<tr>
<th>Courts</th>
<th>Most Important Data that Should Be Collected</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Court of Australia</td>
<td>Lapsed time and whether or not case management approaches are working effectively.</td>
</tr>
<tr>
<td>Family Court of Australia</td>
<td>From the Family Court’s perspective the length of time the case takes – impact on the other represented party – reasons for SRL status would be of interest.</td>
</tr>
<tr>
<td>Federal Court of Australia</td>
<td>The Federal Court’s data collection is focussed on information it needs.</td>
</tr>
<tr>
<td>Administrative Appeals</td>
<td>AAT needs specific data on whether or not SRLs are supported</td>
</tr>
</tbody>
</table>
Tribunal by friends, relatives or other support people.

<table>
<thead>
<tr>
<th>Tribunal</th>
<th>Field Names List</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fair Work Australia</td>
<td>It is mainly the numbers of SRLs and then the point at which they get representation and at what point any assistance drops off.</td>
</tr>
<tr>
<td>Migration Review Tribunal–Refugee Review Tribunal</td>
<td>Sanctioned migration agent data – there is a data exchange arrangement with OMARA – and if an agent is sanctioned the MRT–RRT will write to the applicant and representative about that and send all correspondence to the applicant.</td>
</tr>
<tr>
<td>Legal Aid NSW</td>
<td>Data about outcomes for people refused aid and who then go on as SRLs</td>
</tr>
<tr>
<td>Public Interest Law Clearing House (VIC)</td>
<td>Data about what happens to SRLs in court and tribunal processes</td>
</tr>
<tr>
<td>Public Interest Law Clearing House (QLD)</td>
<td>Data comparing SRL outcomes between those assisted with ‘alongside’ and shepherding programs and those not so assisted</td>
</tr>
</tbody>
</table>

Table 3.4 Field Names in IT Systems

3.20 Interviewees were asked:

Do you have a list of field names that you use in your IT system? Could we have a copy of it?

<table>
<thead>
<tr>
<th>Courts</th>
<th>Field Names List</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Court of Australia</td>
<td>A list of field names is available; however some field names are not clear and may not make much sense to external users or researchers. Separate databases exist and all have different codes. Representation status is recorded simply as yes or no.</td>
</tr>
<tr>
<td>Family Court of Australia</td>
<td>Very complex – in a number of different systems</td>
</tr>
<tr>
<td>Federal Court of Australia</td>
<td>Provided by letter to the ACJI.</td>
</tr>
<tr>
<td>Administrative Appeals Tribunal</td>
<td>Yes it is available.</td>
</tr>
</tbody>
</table>

Table 3.5 Problems Faced by Courts/Tribunals Regarding Data Collection on SRLs

3.21 Interviewees were asked:

Are there any other problems the court faces regarding data collection on SRLs? E.g. Consistency of data entry by staff

<table>
<thead>
<tr>
<th>Courts</th>
<th>Data Collections Problems</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Court of Australia</td>
<td>The HC is relatively small in terms of case numbers. The Court completes data checks monthly and matters and data are corrected – thus consistency is less of an issue – if there is a problem, someone will notice fairly quickly and correct it.</td>
</tr>
<tr>
<td>Family Court of Australia</td>
<td>Similar issues to the Federal Court. Defining who is a SRL –</td>
</tr>
</tbody>
</table>
Federal Magistrates’ Court of Australia | “who is in and who is out” in the category of SRL – questions raised about how to determine who are SRLs. Apart from that the Court gets the information they need.

Federal Court of Australia | SRL management plan objectives were met – it is not the body of SRLs that is problematic, rather the vexatious/querulous litigants that are a very small number and proportion of the SRL pool. The query is then what benefit would broad data about SRLs be if it is really about individual people who might be problematic.

Administrative Appeals Tribunal | Basic reporting of data – data entry is robust so inconsistency issues are not really an issue.

Fair Work Australia | Collecting data about SRLs hasn’t really been on the agenda of Fair Work Australia until recently and thus hasn’t been prioritised in the IT system. The jurisdiction has broadened, and unfair dismissal is becoming the bulk of the work. The FWA would like to consider what processes are appropriate for SRLs, who are increasingly forming a greater part of their client load. Thus a literature review has been completed, and in the next financial year FWA will start exploring SRL issues in a more strategic fashion including ways in which information can be provided to SRLs.

Migration Review Tribunal–Refugee Review Tribunal | Not really a problem – MRT–RRT is a small agency so there are limited resources to do more reporting than is already done. The case management system is comprehensive, but the resources are not generally available to do more detailed research of the data on SRLs.

**Table 3.6 Capacity of Court to Collect Data and Factors Impacting on Data Collection on SRLs**

3.22 Interviewees were asked:

Is there anything you would like to add? For example, about the capacity of the court to collect data and the factors impacting on the ability to collect or not collect data such as human resources, IT resources or other?

<table>
<thead>
<tr>
<th>Justice Agencies</th>
<th>Capacity to Collect and Impacting Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Court of Australia</td>
<td>The HC has smaller case base than many other Courts and generally the processes are much simpler and streamlined. The revamped website has made information more accessible to SRLs. The publication of transcripts helps make the HC more accessible. The Court collects what it considers it needs. It has the capacity to do other reports, but the system is tailored so it needs IT assistance to change anything. Information is collected at the start of a matter but not throughout because it is not as relevant to the way in which the HC operates and there is not the same need as with other courts.</td>
</tr>
<tr>
<td>Federal Court of Australia</td>
<td>Helping an SRL get representation is probably the most</td>
</tr>
</tbody>
</table>
### Comparability, Comprehensiveness and Quality

#### 3.23 The preceding sections and in Chapter 2 highlight the difficulties in comparing data between agencies. Either the relevant information is missing or it is not developed to the degree that it would be useful. Differences in agency priorities mean that the picture will continue to be one of variation and ongoing inconsistency and gaps.

#### 3.24 The issue is how best to overcome these deficiencies and to encourage agencies to collect information. First, the task is to determine which information is relevant. Several options are available, and these are predicated on underlying incentives and drivers that are relevant to accurate data collection:

- Agencies need to have a reason to engage with the issues presented by SRLs, in order to dedicate resources to measuring aspects of the issue, either through priorities set by government or through opportunities for funding.
- The agencies with a current interest in collecting detailed and relevant data should be encouraged to continue that collection, and the results should be disseminated to agencies that do not collect data on SRLs and yet have an interest.
- SRLs themselves should be engaged in data collection through initial and ongoing user input, ensuring that identification protocols are in place.
- Systematic evaluation and research should be in place to refine trends and identify opportunities for improved service provision, which in turn returns efficiencies to the agencies.
- While the data collection should not be centralised, the data collation and analysis should be centralised. Many options should be available to receive data.

#### 3.25 As already noted, a starting point would be obtaining support across Justice Agencies for a many-faceted definition of an SRL. This may support early data formulation, basic evaluations about the extent of SRL activity in Australian courts and tribunals and provide the basis for some comparisons. While comparisons are used elsewhere between different agencies to describe activity, the qualifications...
attached to the data and comparative graphs are usually extensive.\textsuperscript{30} Better models exist either with extractions of data from agencies for off-site reprocessing or with newer business intelligence software solutions capable of mining multiple databases with different fields and definitions and finding new consistent information.

3.26 The data that is available suggests that, in some agencies, early intervention programs and shepherding programs that are directed at SRLs may reduce the resourcing impact on courts and tribunals. These reductions and impacts are largely unmeasured; however, more system changes such as the outreach and coordinator programs already underway may be warranted. Arguably, these may be required to cater to an emerging digitally sophisticated disputant and the fact that the role of agents and representatives (including lawyers) may fast be diminishing. The testing of this type of hypothesis requires both measurement and management.

3.27 The accessibility of the current data is reasonable. With further investigation, an assessment of a series of one-off reports and interrogation of some of the data systems could be undertaken to ascertain trends. For researchers or even SRLs, who are well outside agencies, data is not generally accessible. For SRLs, having access to clear data on processes, time-frames and outcomes might assist them to make informed choices about representation and also support better quality decision-making.

3.28 The Survey showed that hardcopy or file information may contain additional relevant information about SRLs. However, the extent of this hardcopy information varies from agency to agency. Accessing this information would require time-consuming file review activity, and given the variability in content collection, it could potentially be ineffective.

3.29 Existing data collections in the courts are often audited and reviewed. The difficulty is with the non-mandatory SRL field where auditing is less pervasive. Firm conclusions could not be drawn from this field due to differences in definition and lapses in completion.

3.30 Appendix E sets out in detail the data collection practices of each agency. The last Chapter of this Report extends this discussion and provides recommendations.

4

Recommendations

Introduction

4.1 This Chapter outlines recommendations arising from the previous chapters and the Literature Review. As has been already noted, the Project Team considers that a first task is to engage justice agencies in the objective of finding a multi-faceted definition of SRLs. If courts, tribunals and other agencies want to have a better understanding of SRL activity, they need to have a mandatory field in case management systems for SRLs, rather than just deeming someone to be an SRL by virtue of the fact that no legal representation is listed.

4.2 The Project Team also considers that it is useful to determine intention from the point of view of the SRL. This may provide a basis to assess SRLs as informed, uninformed, knowingly denied assistance due to cost restraints, unknowingly disadvantaged or other variations of these categories. This will be assisted by the capacity for SRLs to enter more data about themselves online – an increasing feature of more developed court and tribunal support systems.

4.3 Another perhaps more difficult and long-term recommendation is that the task of data collection be gradually extended outside courts and tribunals – perhaps through evaluation and research, to assess what proportion of those with ‘legal problems’ resolve these problems before entry into the court and tribunal system as a result of receiving Internet-based, telephone or live assistance (legal or other).

Variables That Could Be Recorded and Measured

4.4 As noted previously, the Survey results indicate that often limited data is collected by courts and tribunals about SRLs specifically, and when it is collected, the usual problems of definition that arise in the civil justice system can often prevent the data from being used in any comparative or useful way (see ‘data definitions’ below – briefly the fact that a ‘hearing’ may be defined differently in different jurisdictions or a ‘case event’ means that workload activity indicators can be of questionable value). The need for data definitions aside, it seems clear that two different types of data are collected that relate to SRLs. The researchers have described this as follows.
4.5 ‘Pivot decision data’ – Essentially data that is collected at a particular point in time when a decision is made about an SRL. An example of pivot decision data includes data by a Legal Aid Agency (LAA) not to represent a person or data within a court about a decision to waive fees for an SRL because of their income or other status. This ‘rich’ data can reveal much about the demographic and other characteristics of SRLs and their disputes.

4.6 ‘Big data’ – This term is used to describe big and complex data-sets that are hard to use, difficult to report on, search, share or analyse. Many courts and tribunals have data-sets that are cumbersome and require specially written programs to enable analysis about SRL issues to take place. This big data can, however, reveal much about SRLs, particularly if it can be linked or if it can be managed in a way that enables analysis to take place. For big data to be useful into the future, some common data definitions are necessary and common variables need to be collected.

4.7 There are numerous variables that could be collected in the SRL area, but a critical question in this research has been: what is possible, not too cumbersome and can assist to ensure that civil justice objectives are met?

4.8 Turning to the first evaluation criteria: what is possible? The Literature Review and this Report have highlighted a range of consistently reported variables that are seen as relevant in the SRL area:

- Age
- Gender
- Income – both income source and income amount
- Concession card status
- Education
- Location – ‘postcode justice’*
- Referral gateway and information support
- Person or company (and demographic information about organization status)*
- Plaintiff or defendant (applicant/respondent)*
- Identity of opposing party/ies*
- Age of dispute – including date the dispute arose, date of initiation of case and date of finalisation of case and elapsed time between these dates*
- Previous involvement in litigation
- Pre-filing processes (including past tribunal or other involvement, including Freedom of Information (FOI) and Right to Information (RTI) applications) Type of matter*
- What processes were used – e.g. mediation*
- SRL for all of the case or only part of it
- SRLs in separate/different cases or part of one case
- Case outcome or how the SRLs’ dispute was finalised (also, consideration needs to be given on how to control for case complexity)*
- What court/tribunal events did SRLs attend and how many?*
- Case complexity indicators including correspondence events
- Case duration and factors impacting case duration
- Involvement of specialist lay representatives? (Can be just as effective as legal representation – see Ministry of Justice UK approaches)
- Availability of pro bono and duty lawyer schemes
- Nature of court/tribunal support services
- Country of birth of person
- Main language other than English spoken at home
- Proficiency in spoken English
- Indigenous Australian or Torres Strait Islander status

**Impacts:**
- Case duration*
- Problems faced in court

**Reasons for self-representation:**
- Belief that case was simple enough to be heard without a lawyer
- Funding difficulties
- Other reasons – i.e. ease of use of existing tribunal process
- Availability of pro bono or unbundled legal services
- Availability of other self-help services (Internet and other resources)
- Attendance at ADR or other processes
- Characteristics of other party – for example, where the other party is the government and has obligations to assist the SRL.

* Denotes variables that are mostly already collected in partial or complete form but not linked to SRL status.

4.9 The next question is: what is not too cumbersome to collect? The researchers have considered this question closely and are aware that many courts, tribunals and related services have case management systems that can at times be cumbersome and poorly resourced. However, the objective of the overarching Project has been to develop indicators that will improve the civil justice system and not be bound by existing deficiencies – particularly bearing in mind the rapid technological changes that are impacting on data-base reform.\(^\text{31}\) At the same time, it may be that, to

uncover this data, select timed evaluations can also be undertaken. That is, ‘snapshot’ data may be used to provide a picture of how SRLs progress through the system.

4.10 Another concern is how this ‘big data’ is linked between systems. At present, there is almost no linkage between systems. This disparity is reflected to some extent in the disparities between the approaches to case management taken by the various courts and tribunals as well as the differences in purposes already discussed. The variety of relationships between the systems, the drivers of data collection that are evidenced in those systems and the impact on the types of data they collect are summarised below:

- Courts and tribunals with planned processes or predictable processes with planned dates (case management or caseflow management) are more likely to make ‘pivot’ decisions.
  - SRLs that engage with them on their part are less likely to change status throughout the process, largely because they are following the plan.
- Courts that operate with high volumes that do not allow planned processes to the same extent are less likely to use a pivot decision process and less likely to have programs for SRLs.
  - LAAs that provide services direct to these courts are less likely to have SRL programs.
  - SRLs are more likely to change status because events are less planned and costs are unknown.
  - SRLs changing represented status at the last minute (‘imminence effect’) are less likely to provide useful data for courts to manage lists or plan even daily court resource allocation, so little attempt is made to collect that data.
  - SRL data on the type of matter may assist these courts in resource allocation.
- Services that operate in the ‘everyday’ justice field such as PILCHs or legal services are more likely to run ‘shepherding’ or ‘alongside’ processes.
  - These services will collect SRL data again for need, either to justify further grants or funding or for the purposes of one-off evaluations to justify funding.
  - These services may engage with high-volume courts that do not have SRL programs as well as engage with courts and tribunals that do have such programs.
- Collected data is not available for the formal and informal parts of the system, is not linked and it is generally not possible to establish planned models incorporating pivot decision models or specialist programs for SRLs.

4.11 With appropriate linkages in place, a possible inquiry for the courts at the point of allocating resources may be the capacity that that SRL has to collate and deliver timely relevant information reliant on:
- the access that that SRL has to navigation guidance, which might be a function of education and internet access; or
- individual shepherding assistance such as the services provided by the PILCH or defence service associations (VRB).

4.12 All of this information is currently held in inaccessible parts of the system (unless actively sought by the courts and tribunals through outreach programs or managed externally to the courts and tribunals).

4.13 There are implications from this ‘gap’:

- LAAs are not able to determine whether those refused legal aid were represented or otherwise at court; and do not have data on linking outcomes that may inform future aid decision-making.
- PILCH and other everyday justice services are similarly limited.

4.14 The implication of these findings is that, with unlinked big data, it is likely that time and resources may be expended on this population of litigants that may not assist them to resolve their disputes.

4.15 A number of recommendations flow from the material presented above. These are listed below, and possible timing to assist with implementation is also noted.

**Early Actions**

**Recommendation 1 – Courts and Tribunals**

That existing case management IT systems be supplemented with a mandatory SRL field:

a) That entry in this field should trigger a Request for Information to be sent to the SRL to be completed and provided by the SRL. This could be linked to an online system. In appropriate circumstances, the SRL should be provided with a recommendation for assistance in return.

b) That the SRL should be asked and required to report if their representation status changes and the reason for the change.

c) That the requirement be common to all courts and tribunals with similar requests to be used by other agencies and the resulting centralised data should be used to develop over time tailored information supporting the development of SRL services and changes to existing processes.

d) That the requirement be managed via the Internet perhaps with a court/tribunal app or usable system that also enables support information to be provided to the SRL.
**Recommendation 2 – All Agencies**

a) That agencies develop and agree on a common definition of an SRL. An agreed definition of an SRL would improve consistency and allow greater comparability of data on SRLs enabling regular reporting on SRLs and more coherent research and evaluation. The Research Team prefers the broad definition adopted recently in Canada – “Self represented litigant: anyone who is attempting to resolve any component of a legal problem for which they do not have legal counsel, whether or not the matter actually goes before a court or tribunal.”

b) That each agency agree on a variety of sub-definitions to reflect the functional needs of each agency and that encompasses relevant pre-litigation process use and reflects the broader civil justice objectives. For example sub definitions in some courts and tribunals are likely to incorporate at a basic level whether the SRL is an organisation or an individual (these sub definitions will be less relevant in the family law area) and whether the SRL is subject to a pre action requirement.

c) That each agency collect information on the basis of clear definition categories (see (a) and (b) above and link this to reporting about the following indicators (in priority order)):

- That the first indicator should be whether or not the SRL has access to assistance resources including Internet, telephone and live resources (encompassing language, ethnicity, navigation guidance, demographic, expert and legal assistance).

- That the second measure should be linked to case management data about the timing of SRL access to resources (during ADR processes, pre-filing, at filing, hearing)

- That the third measure should be linked to whether or not there are impacts on court resources as a result of SRL status (case complexity, duration, other)

- That the fourth measure should relate to how the SRL accessed the agency (through what pathway) and whether the Internet or other resources were used by SRLs in relation to accessing the service. This last measure could involve detailed analysis or a one-off study to be conducted on SRLs in respect of the agency.

d) That a study on SRLs who indicate at an initial registration stage that they intend to remain as an SRL be conducted and that these results and those of those not indicating intention and not using any services should be compared over time. The objective of such studies include making comparisons in both groups of outcomes with those of represented litigants. This objective should also be measured with trend information in the main data-set.

e) That the task of agreeing these measures should be undertaken so that views are obtained from members of the judiciary and data custodians (including national standing committees on justice system data).
Future Actions

Recommendation 3 – Integrated Data Collection

a) That the results of evaluations, research and centralised data monitoring should be made available on a continuing basis to the Justice Agencies and that this data should be used by them and by the Department in funding deliberations.

b) Additional evaluation to explore services in the pre litigation area and how SRLs access and use these services is required. In addition, exploring the impact of these services on SRL status in the court and tribunal areas will supplement the data collected in the formal parts of the justice system and assist to explore how disputants can be empowered to resolve their disputes at the earliest possible opportunity. Such services extend beyond legal assistance agencies and include litigation funders, pro bono providers and ADR and EDR support agencies.
Appendix A

Project Team

The ACJL Project Team in this Project is as follows:

- Professor Tania Sourdin (Director)
- Alan Shanks (Centre Manager and Data Expert)
- Elizabeth Richardson (Senior Researcher)
- Nerida Wallace (Consultant – Transformation Management Services)
- Michael Hall (Consultant – Transformation Management Services)
- Sarah Russell (Senior Researcher and Editor)
- Myles Watson (Support Research)
- Rebecca Mendelsohn (Support Research)
- Nina Massara (Administration)
Appendix B

Select References

The below table is an adapted and updated table from the Law Council of Australia, *Erosion of Legal Representation in the Australian Justice System Research Report* (February 2004).

**Timeline of significant events, research and comment in relation to SRLs in Australia, 1994–2012.**

**1994**


Law Council of Australia Submission Legal Aid Funding in the ‘90s

Mason, CJ in *Cachia v Hanes* (1994) 120 ALR 385 at 391

**1995**

Attorney-General Lavarch – *The Justice Statement*

**1996**

Attorney-General Williams – announcement of changes to legal aid funding arrangements.

National Legal Aid: Meeting Tomorrow’s Needs on Yesterday’s Budget


**1997**


Senate Standing Committee on Legal and Constitutional Affairs: *Inquiry into Legal Aid*

**1998**

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Table 1: Timeline of significant events, research and comment in relation to SRLs, 1994–2003.
John Dewar, John Giddings and Stephen Parker, *The Impact of Changes in Legal Aid on Criminal and Family Law Practice in Queensland* (‘Griffith Legal Aid Report’). (Faculty of Law, Griffith University Queensland, 1998.)


1999


2000


NCOSS, *Going it Alone* (Law and Justice Foundation of NSW, 2000).


2001


2002


**2003**

Rosemary Hunter, Jeff Giddings and April Chrzanowski, *Legal Aid and Self-Representation in the Family Court of Australia* (Griffith University, May 2003)


**2004**


Elizabeth Richardson, *Self-represented parties: A trial management guide for the judiciary* (Melbourne: County Court of Victoria, 2004).

**2007**

Self Representation Service commenced by Queensland PILCH in the District Court, Supreme Court and Court of Appeal of Queensland.

**2009**


2010

Self Representation Service commenced by Queensland PILCH in the Queensland Civil and Administrative Tribunal.

2011


Self Representation Service commenced by Queensland PILCH in the Federal Court and Federal Magistrates Court, Brisbane on one-year pilot.

2012


Cate Banks, ‘Evaluation of effectiveness of Queensland Public Interest Law Clearing House – Self Representation Service in Federal Court and Federal Magistrates Court Brisbane.’ (Cate Banks Consulting, June 2012).
Case Law

*Cachia v Hanes* (1994) 179 CLR 403;


Legislation

*Family Law Act 1975* (Cth)


s 78 *Judiciary Act 1903* (Cth).


Annual Reports


Federal Magistrates Court of Australia, *Annual Report 2009–2010* (Canberra: Federal Magistrates Court of Australia, 2010);


High Court of Australia, *Annual Report 2009–2010* (Canberra, High Court of Australia, 2010).


**Reports**


Cate Banks, ‘Evaluation of effectiveness of Queensland Public Interest Law Clearing House – Self Representation Service in Federal Court and Federal Magistrates Court Brisbane.’ (Cate Banks Consulting, June 2012).


John Dewar, Barry Smith and Cate Banks, *Litigants in Person in the Family Court of Australia – Research Report No 20* (Family Court of Australia, 2000).


Rosemary Hunter, Jeff Giddings and April Chrzanowski, *Legal Aid and Self-Representation in the Family Court of Australia*. (Griffith University, May 2003).


Law Reform Commission of Western Australia, *Review of the criminal and civil justice system in Western Australia – Final Report Project 92* (Law Reform Commission of Western Australia, 1999).


Tania Sourdin, *Mediation in the Supreme Court and County Courts of Victoria* (Department of Justice of Victoria, 2009), 84.


**Articles**


**Conference presentations and speeches**


**Books and monographs**

E Richardson, *Self-represented parties: A trial management guide for the judiciary* (Melbourne: County Court of Victoria, 2004).
Appendix C

Structured Questionnaire

Telephone Interviews with Data Custodians – Commencing 23 May 2012

The first question asked determined which parts of the questionnaire you use. If they collect a lot of data, use Questions Two & Three. If very little then only Questions One & Three (skip to last page)

- Do you collect a lot of data or any data at all about self represented litigants in your civil jurisdictions?

Go to Page 3 – Opening Questions

Opening remarks

I am going to ask you a series of questions mostly yes/no. It should take about 10 minutes.

We are trying to find out what data you record or collect if any about SRLs. This is not an audit. It is really trying to understand what data might be available about self represented litigants. We are not interested in any figures at this time, just if the data is there or not collected.

The Attorney General’s Department is concerned that in recent times, more and more detailed data is being required for budget bid discussions. This exercise is really about a quick and easy way to establish what needs to be done to take data-sets to equivalent levels in say, health and education. The Department has selected SRLs as a common group across all justice agencies.

I will ask you some opening questions and then the same set of 5 yes/no questions about the start, duration and end of your process. I will finish with a few other questions. Let’s get started.

Design of the Instrument

The schematic for the Interview is as follows. There will be 3 sets of questions:

- Opening questions - Descriptive
- Core Questions - Yes/No
- Finalising questions - Descriptive

The Core Questions will be asked of each of three phases of a case for that court or tribunal.

- Lodgement/Issue documentation including discovery (Start)
- Transactions and events that occur during the process (During)
- Outcome/finalisation/post-surveys (End)

For each of these, we want to know how that data is collected. (How questions)

- IT system
• Hard file
• Survey
• Any other method

**Opening Questions -1**

- 1.1 Do you have a working definition of self represented litigants?
  - For example do you distinguish between unrepresented or deliberately self represented?
  - Do you distinguish between representations ‘on the day’ and where a person has papers prepared for them and this is noted on the file but no representation turns up on the day?
- 1.2 In any case, what is your definition?
- 1.3 Have you had any studies done in the last 5 years by outside or internal teams on SRLs?
- 1.4 May we have a copy?
- 1.5 Do you undertake an annual or regular survey on user satisfaction and does it ask people if they represented themselves?
  - If yes, is there a link or may we have a copy.
  - Do you have any special programs or arrangements for SRLs or do you have any planned?
  - Do you ask people attending the court, and in particular SRLs how long the dispute had been going on before the case was started in the court/tribunal and do you record the answer?

**Yes/No Questions**

I am going to ask you about each stage of your process and I have a set of questions that I want to ask for each of those stages.

The stages are – start, during and end.

- Start covers issue/lodgement and any accompanying documentation before a court event where the person is required to attend.
- During covers the events up until the final hearing.
- End covers the final hearing and how it is recorded.

The questions are the same for each and are yes/no answers. I want to know if you record information about SRLs. So the questions are -

- Is representation recorded?
- Is the type of representation recorded?
- Are the reasons for representative status recorded?
- Can changes in representation be detected?
- Is data relevant to the running of the court/tribunal collected, i.e. time, attendances?
- Is there interpreter data collected?
- Is there demographic data collected?
- Can SRL data be linked to outcome data?
- Is there data on case duration and complexity?
- For each of these, how is it held?
  - IT
Hard Copy
Surveys

I will also ask you some general questions and you can comment on anything relevant at the end of the questions.

- 2.1 Is self representation recorded?
  - 2.1.1 Defendant
  - 2.1.2 Plaintiff
  - 2.1.3 If a Person
  - 2.1.4 If a Company

- 2.2 Is the type of matter recorded?
- 2.3 Is the procedure used recorded? Eg mediation or other procedures?
- 2.4 Is help for SRLs recorded?
  - 2.4.1 court appointed,
  - 2.4.2 legal aid,
  - 2.4.3 private,
  - 2.4.4 none,
  - 2.4.5 pro bono,
  - 2.4.6 amicus curiae, (friend of court)
  - 2.4.7 McKenzie friend(friend they bring)
- 2.5 Are the reasons for non-representative status recorded?
  - 2.5.1 i.e. cost,
  - 2.5.2 knowledge,
  - 2.5.3 language,
  - 2.5.4 deliberate decision
  - 2.5.5 Income – can’t afford it or too expensive
  - 2.5.6 Complexity of case
  - 2.5.7 Other
  - 2.5.8 Conflict with lawyer
- 2.6 Are changes in representation collected?
  - 2.6.1 Are reasons for changes in representation collected?
- 2.7 Do you collect SRL info on the running of the court/tribunal?
  - 2.7.1 Elapsed time
  - 2.7.2 Do you record an attendance index for self-represented litigants?
- 2.8 Is there interpreter data?
  - 2.8.1 professional interpreter,
  - 2.8.2 family member
  - 2.8.3 Interpreter language
  - 2.8.4 English proficiency
  - 2.8.5 Main language spoken at home
- 2.9 What demographic data is collected?
  - 2.9.1 educational,
  - 2.9.2 economic, socio,
  - 2.9.3 business/ industry
  - 2.9.4 age
2.9.5 gender
2.9.6 literacy
2.9.7 geographical locations
2.9.8 other
2.9.9 CALD,
2.9.10 Aboriginality TSI
2.9.11 Ethnicity
2.9.12 Other?
2.9.13 Income status
2.9.14 Concession card

2.10 Do you collect data on case outcomes that could be linked to SRL matters?
   2.10.1 Do you collect information on case complexity?

2.11 Do you collect data on the number of court appearances that the SRL attended?

2.12 Do you collect any data on case duration?
   2.12.1 Do you collect data on how active the SRL was in the case?

Comments

3.1 Is there any data not mentioned here that you think should be collected?
3.2 What is the most important data that should be collected?
3.3 Do you have a list of field names that you use in your IT system? Could we have a copy of it?
3.4 Any other problems the court faces regarding data collection on SRLs? E.g. Consistency of data entry by staff
3.5 Is there anything you would like to add? For example about the capacity of the court to collect data and the factors impacting on the ability to collect or not collect data such as human resources, IT resources?
Appendix D

LIST OF COURTS, TRIBUNALS AND AGENCIES CONTACTED FOR INTERVIEW

Aboriginal and Torres Strait Islander Legal Services (Queensland) Ltd
Administrative Appeals Tribunal
Fair Work Australia
Family Court of Australia
Federal Court of Australia
Federal Magistrates' Court of Australia
High Court of Australia
Legal Aid ACT
Legal Aid Commission of Tasmania
Legal Aid NSW
Legal Aid Queensland
Legal Aid Western Australia
Legal Services Commission of South Australia
Migration Review Tribunal–Refugee Review Tribunal
National Aboriginal and Torres Strait Islander Legal Services (QLD)
National Association of Community Legal Centres
National Indigenous Family Violence Prevention Legal Services
National Indigenous Family Violence Prevention Legal Services (VIC)
National Native Title Tribunal
National Pro Bono Resource Centre
Northern Territory Legal Aid Commission
Public Interest Law Clearing House (NSW)
Public Interest Law Clearing House (QLD)
Public Interest Law Clearing House (VIC)
Social Security Appeals Tribunal
Superannuation Complaints Tribunal
Veterans' Review Board
Victoria Legal Aid
Appendix E

Introduction

This Appendix explores and comments on the available material on SRLs provided by the courts, tribunals and agencies in public and one off reports. It is clear that different agencies collect different information for different purposes. The Appendix highlights some of these differences, which are in part linked to the characteristics of each agency and the way in which each engages with SRLs.

Courts

High Court of Australia

The Annual Report 2010–2011 of the High Court of Australia reported that 34 per cent of special leave applications were filed by self-represented litigants during 2010–2011, compared with 51 per cent during the previous financial year.\(^\text{33}\) Immigration applications have high numbers of self-represented litigants, comprising, for example, 93 per cent of the immigration applications filed in 2009–10.\(^\text{34}\) Over a 10-year period, self-represented litigants made up 25 per cent of special leave applications in 1999–2000 increasing to a high of 67 per cent in 2007–2008,\(^\text{35}\) to return to lower numbers again in 2010–2011.\(^\text{36}\)

Limited data on self-represented litigants is collected in the High Court and is restricted to the limited information that the High Court requires for operational purposes. To some extent this data reported in the High Court Annual Report. The jurisdiction of the Court is confined, and processes are often simplified with intensive management and a relatively small (although very complex) case load. As there are no

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\(^\text{34}\) High Court of Australia, *Annual Report 2009–2010* (Canberra, High Court of Australia, 2010), 14.


trials, but rather carefully structured hearings, the High Court may not face the same demands as many other courts in relation to self-represented litigants.

The High Court has Rules that are specifically oriented towards and govern the process in relation to self-represented litigants, which state:

HIGH COURT RULES 2004 - REG 41.10

Unrepresented applicants

41.10.1 An unrepresented applicant shall present his or her argument to the Court in the form of a draft notice of appeal and written case, which, unless the Court or a Justice otherwise directs, shall not be served on any person who was a party to the proceedings in the court below.

41.10.2 The draft notice of appeal of an unrepresented applicant shall be in Form 24.

41.10.3 The written case of an unrepresented applicant:

(a) shall be in Form 18;

(b) shall not exceed 10 pages; and

(c) shall be filed within 28 days of the filing of the application, together with two additional copies of the written case, the draft notice of appeal and all of the documents filed by the applicant in accordance with rule 41.01.2.

41.10.4.1 If an unrepresented applicant does not comply with paragraph 41.10.3 (c), the application is taken to be abandoned unless the Court or a Justice orders or directs otherwise.

41.10.4.2 If the application is taken to be abandoned, the Registrar must, if asked by the respondent, give the respondent a certificate to that effect.

41.10.5 Where an unrepresented applicant has filed a written case, any two Justices may, without requiring any party to the proceedings in the court below to respond to the applicant’s written case, determine that the application should be dismissed and direct the Registrar to draw up, sign and seal an order dismissing the application.

41.10.6 Where no direction has been given under rule 41.10.5, the Court or a Justice shall direct the applicant to serve a copy of the written case and the draft notice of appeal on the respondent and the provisions of these Rules relating to the filing and service of a summary of argument by the respondent and a reply by the applicant shall apply as if the applicant’s written case were that party’s summary of argument.
The High Court does not have a working definition of self-represented litigants; this group is simply identified based on whether they have legal representation or not and no distinction is made between people who are unrepresented but who wish to be represented and those who are more deliberately self-represented.

Most SRLs are unlikely to appear in person at a hearing and matters involving SRLs are generally dealt with on the papers. The High Court has not done any studies on self-represented litigants in the last 5 years and does not undertake an annual or regular survey on user satisfaction. There are no special programs or arrangements for SRLs apart from the special provisions made for SRLs in the High Court Rules, extracted above.

The High Court collects information on representation at lodgment and although changes in representation are recorded, a history of representation is not held in the case management system; that is, the case management system will record the current representation status only. The High Court collects information regarding the type of matter, with catchwords usually taken from those used by the lower court in relation to each case and these can be linked to SRL status (if necessary). In terms of recording the type of procedures used in relation to each case, the High Court records directions hearings and some other administrative matters but largely the processes used are simple case management processes. Dispute resolution processes such as mediation, for example, are not used.

The type or extent of any assistance that a self-represented litigant might receive is not generally recorded. If it is recorded it is found on the hard copy court file, not recorded electronically and thus this information is hard to collate. Where counsel is involved, the Court does not record whether counsel has been court appointed or provided pro bono, and records simply that the person is represented.

Reasons for representation are not recorded, except perhaps in the situation where the person is deliberately self-represented and if relevant this may be recorded on the hard copy court file. The hiring, changing or ceasing of legal representation is unlikely to be recorded in the High Court and a person who is unrepresented but is successful in gaining special leave to appeal may be able to then find pro bono representation. The High Court does not perceive that it was necessary to collect data about the reasons for changes in representation. Information about the use of interpreters, who are always professional interpreters, is generally held on the hard copy court file and would have to be physically collated.

The High Court only collects limited demographic data including gender (although this is not countable electronically), geographical location, and concession card status is collected in relation to fee waiver status, but the Court does not collect data on ethnicity, Aboriginal and Torres Strait Islander status, income status, age or education.

Data on case outcomes in relation to SRL status is not collected, although the Court has capacity to do so if it requires that information. The High Court does not collect...
information on case complexity in relation to self-represented litigants, or in relation to the number of court appearances by self-represented litigants. This is less relevant to the High Court, where there are so few directions hearings and single judge hearings. The High Court reported to the researchers that this year there had been a total of 165 single justice hearings and only 38 of those involved appearances by self-represented litigants. The High Court collects information on case duration and elapsed times, however in the Survey researchers were advised that the vast majority of cases do not involve a formal hearing because matters are heard on the papers, with most cases in the High Court only taking six months from start to finish. This is short compared to other courts.

In short, the High Court collects information that it needs regarding elapsed times and delay. In terms of the problems that the Court might face in relation regarding data collection on self represented litigants such as consistency of data entry by staff, a problem faced in some other courts, the Court conducts regular data checks and any anomalies are corrected in that process, thus consistency is less of a problem and inconsistencies will be quickly identified.

The High Court also assists self represented litigants with enhanced online information and increased print information for self represented litigants. It also publishes transcripts and this may make it more accessible than some other courts in that SRLs may get a better sense of hearing processes and directions. The Court collects data to meet its needs and although it has the capacity to create more focused SRL reports that would deal with some data variables, this would require changes to the existing tailored IT system.

**Federal Court of Australia**

In the late 1990’s studies suggested that 17 percent of parties in the Federal Courts were self represented. More recent statistics can be found in the Annual Reports of the Federal Court of Australia. However in the Annual Report 2010-2011 the Federal Court notes that while its case management system is able to extract some broad statistics about the number of SRLs who are appearing as applicants, respondents are not recorded. Further as the field for self represented litigants is not a mandatory field in the Court’s case management system the statistics presented in the Annual Report are indicative only. In 2010-2011, it was said that 336 people who commenced proceedings in the Federal Court were self represented and were mainly in migration appeals. The top four causes of actions were appeals, administrative law matters, bankruptcy and corporations’ matters. Over half of SRLs were in the New South

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Wales Registry. These patterns are broadly consistent with Annual Report in the preceding 2009-2010 financial year.

Information collected by the Federal Court of Australia on self represented litigants is limited and this information is presented in the Annual Report. The Federal Court does not distinguish SRLs in terms of those who are unrepresented or deliberately self represented. The Federal Court is primarily interested in, and identifies SRLs, by reference to whether the person has legal representation or not.

Registry staff in the Federal Court can direct SRLs to agencies where legal assistance maybe provided, or under the Federal Court Rules 2011 Division 4.2 the Court may refer a party to a lawyer for legal assistance to provide:

(a) advice in relation to the proceeding
(b) representation at a directions, interlocutory or final hearing or mediation
(c) drafting or settling documents to be used in the proceeding
(d) representation generally in the conduct of a proceeding.

The Federal Court has not conducted studies of self represented litigants in the past five years and does not conduct an annual or regular user satisfaction survey. Until 2007 the Federal Court had a Self Represented Litigants Committee that received statistical reports on self represented litigants that had been manually collected and were ad hoc in nature. The Federal Court does not have a current Self-represented Litigant Management Plan; the objectives of the former Self-represented Litigant Management Plan developed in 2001 having been met. In terms of special arrangements for self represented litigants, apart from the provisions above in the Federal Court Rules 2011, the Federal Court has a pilot with Queensland PILCH to assist self represented parties who come to Court in that State.

Self representation is recorded in the Federal Court Casetrack case management system. If the legal representation is not recorded, SRL status is assumed. Although there is a specific SRL ‘tickbox’ on the case management system, this is not consistently used by Court staff. Whether the self represented party is an applicant or respondent is recorded, as is whether the party is an individual or a company (in Insolvency matters sometimes the party will be inactive). The type of matter is recorded and the processes used.

In relation to assistance received by the SRL, the Federal Court manually retains on the Court file referrals to assistance under the Federal Court Rules 2011, and this may also be captured on Casetrack. The Court may not know whether the SRL has

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41 Federal Court of Australia, Annual Report 2010-2011 (Canberra, 2011), 44.
42 Federal Court of Australia, Annual Report 2009-2010 (Canberra, 2010).
organized pro bono representation although this information may possibly be found on the hard copy file. Appearances by amicus curiae may be captured on Casetrack if an appearance has been filed and similarly McKenzie friends may be recorded in Casetrack and any judgment or orders, if that person’s details are recorded by the Court.

The reasons for self representation are not collected by the Federal Court. However, changes in representation are available on the Commonwealth Court Portal and Casetrack via information available on the end date of representation and through ‘Cease to Act’ forms that are filed by solicitors and are held on the hard copy file. If relevant, changes to representation may be recorded on the hard copy file. Information on self represented litigants in relation to the running of the court such as elapsed time or an attendance index for self represented litigants may be noted but where a litigant may have received ‘unbundled’ advice, this will not be recorded.

Interpreter data, including the interpreter language, is collected in Casetrack and on the hard copy file; professional interpreters are most commonly used, with family members used in less frequently in insolvency or migration matters where there is no interpreter available.

The Federal Court collects limited demographic data in Casetrack including concession card or financial hardship status if the person applies for a reduced court fee, occupation may be recorded if provided and limited geographical location data through the address recorded. Data on case outcomes related to SRL status is not linked, nor are variables relating to case complexity. Similarly, although the Federal Court collects data on number of court attendances, it does not distinguish SRL status and does not collect data on case duration or how active an SRL was during the court processes or in the case management framework.

The information collected by the Federal Court of Australia is limited to information it needs for operational purposes. The Court does not perceive the body of self represented litigants to be problematic, rather it is the very small number of unreasonable or difficult self represented litigants that pose a challenge for the Court. Thus, broad data on self represented litigants may not be seen to be useful to the Court, rather than more specific information on the small group of problematic self represented litigants. Helping self represented litigants get representation was identified as an important issue by the Court. Further, as the numbers of SRL’s in the Federal Court are relatively high in migration matters, it may be worthwhile to collect more data around ethnicity and language proficiency in these matters.

Family Court of Australia and Federal Magistrates’ Court of Australia

Research in 2002 in the Family Court of Australia by Hunter and others indicated that in contested cases approximately 31 percent of litigants at first instance were unrepresented and 18 percent of litigants in appeal cases had been unrepresented at
some stage during the matter. Litigants at appeal were more likely to be fully unrepresented rather than at first instance when partial representation was more likely. Hunter and others noted that there had been a gradual increase of SRLs between 1995 and 1999. There were differences in numbers of SRLs between Family Court registries. These figures are reasonably consistent with those reported in more recent years.

Recent annual reports of the Family Court of Australia indicate that numbers of SRLs have remained reasonably steady for the past five years. The proportion of finalised cases that had one litigant who was self represented was 16 percent in 2010–11. In finalised cases about 10 percent of cases neither party represented. At trial, in 2010-2011 28 percent of cases had one party who was unrepresented and 7 percent of cases where both parties were unrepresented.

Annual reports for the Federal Magistrates Court have reported that in the past three years in approximately 36 percent of cases at least one party didn’t have representation. In 2007-2008 16.5 percent of total filings in family law matters in the Federal Magistrates Court were by self represented litigants, with 70 percent of divorce filings were by self represented litigants. Numbers of self represented litigants in general federal law matters in the Federal Magistrates Court were not

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47 The data reported in recent annual reports from the Family Court is understandably much more limited than the data found in the 2002 research report by Hunter, Genovese, Chrzanowski, and Morris therefore precise correlations are difficult.

48 Family Court of Australia, Annual Report 2010-2011 (Canberra: Family Court of Australia, 2011).

49 Family Court of Australia, Annual Report 2010-2011 (Canberra: Family Court of Australia, 2011).

50 Family Court of Australia, Annual Report 2010-2011 (Canberra: Family Court of Australia, 2011).

51 Family Court of Australia, Annual Report 2010-2011 (Canberra: Family Court of Australia, 2011).


available in 2007-2008. In family law matters in 2006-2007 self represented litigants were present in approximately 17 percent of final orders, 20 percent of interim orders, 69 percent of divorce proceedings and approximately 46 percent of contravention orders. These percentages were marginally less than the previous year (2005-2006) for the same types of family law orders.

The Family Court and Federal Magistrates Court of Australia records information about representation in Casetrack; if there is no representation the field in Casetrack remains blank and it is assumed that the person is self represented because they don’t have legal representation listed. Any broad available data on representation is contained in the Annual Report. The Family Court and Federal Magistrates Court do not have a particular definition of SRL.

There are no specific programs for self represented litigants however there is considerable information made available online and the Court is constantly trying to improve access. The Family Court also has the “less adversarial trial” program which attempts to make court more accessible and is likely to assist some SRLs.

Assistance for self represented litigants is not recorded, as once a person has legal aid or other legal representation, that person would not be identified as an SRL.

Reasons for self representation or reasons for changes in self representation are not recorded. However, changes in representation are recorded, and a history of representation is available should the Courts require a report to be produced. The information collected on self represented litigants, and indeed any matter, in relation to the running of the Courts includes numbers of times the person/party comes to court and the length of the hearing, as well as elapsed times. Interpreter data is not collected in the case management system but in the hard copy court file. Information on English proficiency is collected, although this information may not be used by the Courts. The demographic data collected by the Family Court and Federal Magistrates Court include date of birth, gender, geographical location (via registry lodged or postal address), country of birth, country that the marriage took place, date of separation, Aboriginal and Torres Strait Islander status, and concession card status via fee waiver or fee reduction applications.

The Family Court and Federal Magistrates Court collects data on case outcomes, particularly the point at which the matter settled. The Court identifies a number of steps at which settlement may occur:

- First directions hearing
- Court Conference
- Trial date set


- During the trial process.

The Court is very interested on how many cases settle at the first hearing or just before – ‘on the doorstep’, and this data is reported in the Annual Report and quarterly reports are created for internal purposes also. Data is not collected on case complexity. However information on the number of court appearances and duration by self represented litigants is collected. The most important data from the Courts perspective is the length of time a case takes. Difficulties with data on self represented litigants arise around defining who is an SRL, that is, who is in and out of the category as the person may be partially represented and it may be difficult to determine who is a self represented litigant. The fields in the case management system are not mandatory so it is not always the case that data is consistently recorded.

The Family Court does focus and has more closely considered issues relating to vexatious litigants who may also be SRLs. In March 2012, the Senate Committee Report into the Access to Justice (Federal Jurisdiction) Amendment Bill 2011 noted that:

By way of background, the Chief Justice informed the committee that, as at 1 January 2012, the Family Court had 727 current orders in place which restrain 264 named litigants from instituting proceedings of a particular type. 56

The Chief Justice noted that:

[T]he Family Court has more litigants who are vexatious or who are, in some ways, prohibited from bringing proceedings than, certainly, any other superior court and maybe any other jurisdiction. That is just the nature of the work. I can give you a little example so that you will have some appreciation. If the litigant is persistent in pursuing a parenting matter in the course of the proceedings up until the final hearing, they might sometimes file one, two or more applications every week...It is the nature of the jurisdiction, but it becomes pretty important from our point of view to make sure that we have the appropriate powers so that we can deal with these applications when they are made. 57

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Tribunals

The Administrative Appeals Tribunal

In 1998 Gamble and Mohr noted that 20-30 percent of parties were unrepresented litigants in the AAT. In a research report prepared for the Australian Law Reform Commission Review of the Federal Civil Justice System more than a decade ago, it was found that levels of representation varied depending on the review jurisdiction with SRLs much more prevalent in social welfare cases compared with veteran’s affairs matters. Costs are generally not allowed in some categories of cases. According to the ALRC report many applicants received some kind of assistance from legal representation at some stage of proceedings.

The Administrative Appeals Tribunal does not have a definition of self represented litigant but if a person attends the Tribunal for any event without a lawyer they are described as an SRL (including if they bring a friend, a relation or anyone else). Changes of representation status are collected in the case management system as are the types of representation. It was reported to researchers that approximately 50 per cent of all applicants to the AAT are self represented so a definition is perhaps not useful for it describes the main group rather than any particular group. While there is no clear ‘data’ definition of SRL, the AAT suggests that an SRL is a person who:

- Doesn’t nominate a legal representative or
- Nominates a friend or relative or
- Is without legal representation.

As noted previously, the AAT conducted an internal ad-hoc limited study of SRLs in 2011 in order to compare statistics with the larger ALRC file review study carried out in the late 1990’s. It was found that there had been some, but not major, change since the ALRC study. The rate of self represented litigants in social security matters had reduced but this may reflect the establishment of the Welfare Rights Network. However there were some rises in SRL’s in some areas. User satisfaction surveys that can give some information about SRL’s are conducted every three years however it is not clear what the demographics of those responding to such surveys is.

The types of special support arrangements for self represented litigants in the AAT include brochures, website, communications and Outreach Process. In addition, the

conference process is directed at explaining Tribunal processes, timelines and arranging interpreters.

The reasons for self representation are not recorded, however changes in representation are generally noted in the case management system and on the hard copy file. Interpreter data is collected at the start of a matter, but does not distinguish whether the interpreter is professional or a family member; the interpreter language is recorded also, but not the English proficiency or language spoken at home of the SRL. Demographic data collected is limited to geographical location and concession card status although this data may be available on case files particularly where the SRL is seeking a government benefit.

The AAT would like to collect more information about how self represented litigants interact with the AAT and is employing a data manager to enable the Tribunal to get more from its case management system by designing reports and extracting the relevant data. More information about support provided by external services, friends, relatives and support people is important data for the AAT.

**Fair Work Australia**

Fair Work Australia (FWA) is a Tribunal that deals with matters under the Fair Work Act 2009. The FWA does not collect data on self represented litigants but has an increasingly wide disputant base that includes self represented litigants. The FWA is seeking to address the issue of data collection in the near future. The FWA case management system is not set up to record SRLs and doesn’t differentiate between SRLs and other forms of representation. Unfair dismissal applications and general protection matters (these include disputes about employer taking adverse action such as not getting overtime or where someone is sacked because of gender status) are key SRL activity areas and it is presumed by FWA that people will not always be represented.

The FWA does not distinguish between self represented litigants that are unrepresented or self represented by choice. People who wish to be represented may be able to obtain representation if they are a member of a union or if an employers from an employer organization; however according to FWA, many will choose not to be represented. FWA has not done any studies in the past five years but has completed their own literature review with the view to developing a project targeting self represented litigants in the future.

In terms of regular surveys there is a telephone conciliation process for the unfair dismissal process and a study was undertaken of this process but SRL and represented status were not explored as variables.

As SRL status is not collected, even where the FWA collects information in the case management system about types of matters, type of procedures, case outcomes these cannot be tied or linked to SRL status. Further, changes in representation are not recorded. Some interpreter data is collected on the case management system and this is usually where professional interpreters are used. Ordinarily, the only
demographic data collected relates to the business size, amount of money involved and the geographical location of the disputants.

Although there is no current recording of SRL status at the FWA, this may change in the future as the Tribunal seeks to improve access. The key areas of interest to the FWA are likely to be the numbers of SRLs, at which point SRLs get representation and the point at which representation drops off. Collecting data about SRLs has not been a priority for the FWA and thus has not been prioritised in the IT system.

**Migration and Refugee Review Tribunals**

The Migration Review Tribunal/Refugee Review Tribunal does not collect specific data on self represented litigants because there is a presumption that those who commence a matter will not be represented. The MRT-RRT conducts merits review of visa applications. The RRT deals with protection visas and MRT deals with all other applications/visas. There is a set time under the legislation to lodge applications for reviews thus delay is not generally a problem. The MRT-RRT operates under an inquisitorial system and the department is not represented in any way.

Various people can act as support people in this jurisdiction – legal aid lawyers, migration agents, parliamentarians, and those falling into other categories set out in Part 3 of the *Migration Act 1958*. What the support people do is distinctly different from the role played by traditional representatives in that the support person is not ordinarily able to appear for the person, he or she must speak for him/herself. The MRT-RRT has an extensive case management system - tailored reports can be generated on whether people have representation or not.

Because of the presumption of SRL status the tribunals do not have a definition of self represented litigants. The Tribunals have not conducted any studies on self represented litigants, however they are currently conducting external stakeholder surveys of applicants, interpreters, representatives in three separate surveys. There are no special arrangements for self represented litigants; general support arrangements exist – pre-hearing briefing with interpreters and all applicants entitled to the same support arrangements.

It is only when the person has a representative that the details are recorded. The only party involved in the MRT-RRT matters is the applicant because the Tribunals only conduct merit reviews. The types of matters are recorded in relation depending on whether it is an MRT or RRT matter and the visa subclass. The types of procedures are recorded.

In terms of help provided to self represented litigants, there are special provisions made for vulnerable applicants which include those at risk of harm to self or others; or vulnerability due to factors such as age, disability, mental illness. There are a range of strategies to deal with those matters when vulnerability is flagged in the system. Reasons for SRL status are not recorded but changes to representation are recorded because advice of any change must be made in writing to the Tribunals; however, the reasons for changes in representation are not recorded.
Interpreter data is collected on the case management system, which interacts directly with the interpreter service. Interpreter language is collected, and the English proficiency of the applicant. The only demographic data collected is age. Gender, address/geographical location, ethnicity (for language reasons) and income status is not recorded unless it is relevant to a visa subclass. Concession card status is held only in relation to fee waiver. Case outcomes, case complexity, number of appearances, and case duration is not collected in relation to SRLs.

The most important information for the MRT-RRT that is linked to SRL status is the ‘sanctioned migration agent data’ – there is a data exchange arrangement with Office of Migration Agents Registration Authority (‘OMARA’) – and if an agent is sanctioned the MRT-RRT will write to the applicant about that. The case management system is very comprehensive but the resources are not generally available to do more detailed research of the data on SRLs or to link existing data sets.

**National Native Title Tribunal**

The National Native Title Tribunal does not collect data about self represented litigants in civil jurisdictions or have a definition of self represented litigants. However the following information was provided about the work of the Tribunal:

- Some unrepresented native title claim groups and respondent parties are involved in mediation of claims by the Tribunal (this follows referral of such claims to the Tribunal for mediation by the Federal Court);
- Some parties to future act proceedings (either in mediation by the Tribunal or in inquiries conducted by the Tribunal in the exercise of its role as an arbitral body) are unrepresented; and
- Under s 78 of the Native Title Act 1993, the Native Title Registrar can provide assistance first, to help people prepare applications and accompanying material and secondly, to help people, at any stage of a proceeding, in matters related to the proceeding.

Although the Tribunal has not undertaken any relevant studies of self represented litigants, it has conducted a client satisfaction survey which provides information about or relevant to SRLs. The Tribunal provides a number of capacity-building projects (e.g. ‘bundle of rights’ workshops and Aurora Program presentations) which might assist some self represented litigants. The NNTT case management data for Native Title matters is also populated by Federal Court data.

**Social Security Appeals Tribunal**

The Social Security Appeals Tribunal receives around 12,500 applications for review each year and the majority of people appearing in Centrelink, Child Support and Paid Parental leave at the SSAT are self-represented. A person may nominate a representative, however that person is often a family member or other support person rather a legally qualified person. The Annual Report of the SSAT contains some statistics about representation and interpreters.
The SSAT’s new case management IT system has a field that differentiates between an organisational representative and an individual representative. Organisational representatives are categorised as Employer, Agency, Welfare or Legal. Representation by an individual is categorised as Welfare, Lawyer/Solicitor, Family/Friend, Accountant, Spouse, Parent, or Rep-other. However, even when a representative is nominated, this does not necessarily mean that the representative appears at the hearing, and may simply assist the applicant prepare the application for review, written submissions and/or want a copy of the decision from the Tribunal.

The SSAT does not record the reasons for the representative status and a representative may be added, changed or removed during the review process. Interpreter data is collected including the language of the interpreter used. The SSAT collect a range of demographic data (although not all are compulsory) including:

- Gender
- Address
- Date of birth
- Born overseas
- Remote location
- Indigenous status
- International case
- Special needs – visual; hearing; wheelchair etc.

The SSAT does not correlate case outcomes with self-representation however the case management may have capacity to do so in the future. Nor has the Tribunal attempted to collate data on the number of appearances by a self-represented person. The Tribunal records each hearing dates and other interventions but most reviews by the Tribunal involve one appearance by an applicant. Any contact made with a party, whether by telephone, in person or in writing is recorded on the Tribunal file record. The SSAT reported to researchers that the Tribunal is unlikely to attempt to collate data about the number of contacts with the Tribunal made by an unrepresented person versus the number of such contacts made by a represented person.

**Other Tribunals – Veterans’ Review Board**

The Veterans’ Review Board operates in a similar way to a number of compensation review agencies across Australia. It accepts and makes decisions on applications by veterans for review of claims decisions made by the Department of Veterans Affairs. These applications are mostly in respect of compensation and rehabilitation entitlements. In conducting reviews the VRB is not bound by rules of evidence.

The vast majority of applicants are self-represented on the basis of some SRL definitions as they are represented by non-lawyers – mainly Returned Services League, other long-standing ex-service associations or family members. If applicants
do not complete the representation part of the application then they are invited in writing to select a representative from a list of the associations.

At all times, applicants are encouraged to seek assistance by the Board and most do so. The associations have Hotlines staffed by experienced advocates so help is accessible. Approximately 83% of applicants are represented in one of these ways at the VRB. All applicants are surveyed every year and the results reported in the Annual report. If applicants are self represented, case managers employed by the Board will be more active in clarifying the processes and making it user-friendly. Board members will give more information about the process. The VRB does not measure this activity.

In terms of SRL data, the VRB is a small authority and collect some data, however it indicated that it was limited by resources in collecting more data. The most important data for VRB is linked to the numbers of applicants that are represented and those that are not represented. At present, this is hard to extract and correlate due to IT limitations. Similarly, more sophisticated information is not available.

The Department of Veterans Affairs may be able to dedicate funds to studies of this nature and do so for their own reporting purposes, however no other studies have been done. The VRB is seeking to employ more Alternative Dispute Resolution approaches in the future and any studies into SRLs would assist in this endeavor.

Other Tribunals – Superannuation Complaints Tribunal

The Superannuation Complaints Tribunal (“the SCT”) is another tribunal where self representation is assumed, therefore the data collected on self represented litigants is limited. A person who wishes to be legally represented must apply to the SCT for permission, which is not granted as a matter of course. Representation is governed by Section 23 of the Superannuation (Resolution of Complaints) Act 1993, which provides:

- **Right to representation in relation to a complaint**
  1. If a party to a complaint is a body corporate or unincorporate, the party may be represented by a responsible officer of the body.
  2. If:
     - (a) a party to a complaint is not a body corporate or unincorporate; and
     - (b) the Tribunal is satisfied that the party cannot adequately act on his or her own behalf because he or she has a disability;
     the party may be represented by an agent.
  3. If a party to a complaint is not entitled to be represented under subsection (1) or (2), the party must, unless the Tribunal allows the party to be represented by an agent because the Tribunal considers it necessary in all the circumstances, act on his or her own behalf.
  4. In this section:
    “disability”, in relation to a person, has the same meaning as in the Disability Discrimination Act 1992.
The following detailed statistics on Agent Representation were provided to ACJI:

<table>
<thead>
<tr>
<th>Type</th>
<th>Nos.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer</td>
<td>270</td>
<td>53.4%</td>
</tr>
<tr>
<td>Family</td>
<td>102</td>
<td>20.1%</td>
</tr>
<tr>
<td>Financial Planner</td>
<td>58</td>
<td>11.5%</td>
</tr>
<tr>
<td>Accountant</td>
<td>40</td>
<td>7.9%</td>
</tr>
<tr>
<td>Unknown</td>
<td>26</td>
<td>5.1%</td>
</tr>
<tr>
<td>Friend</td>
<td>5</td>
<td>1.0%</td>
</tr>
<tr>
<td>Government Authority</td>
<td>4</td>
<td>0.8%</td>
</tr>
<tr>
<td>Community Body</td>
<td>1</td>
<td>0.2%</td>
</tr>
</tbody>
</table>

Total represented 506 21.2%
Total not represented 1,873 78.8%
Total cases received in period 2,379

The SCT does not consider that self represented litigants are problematic, rather they tend to be cautious about the impact that the involvement of lawyers can have on SCT processes. Also, the superannuation system is largely compulsory and it was reported to the researchers that it would not make sense to create a complaints system that required people to be represented.
Two thirds of matters are resolved by conciliation, and 99 percent of these are by phone. During conciliation one person is allowed to speak at a time and one person only speaks for the insurer; the process is free. If the matter is not resolved at conciliation it goes to a hearing panel who determine matters on the papers – however there are no ‘in person’ appearances (hearings are ‘on the papers’).

Statistics on self representation are found in the Annual Report of the SCT. Although assistance for an SRL is not recorded a family member may be appointed as the agent for the person if granted permission under s 23. Reasons for self representation are not recorded but if representation is granted by the SCT this will be recorded on the papers. Changes in representation would be noted in order for the address for correspondence to be accurate, however the history of representation would only be evident on the paper file; the IT system would only present the current status.

Information pertaining to self represented litigants in relation to the running of the SCT is not collected, nor is elapsed time. Interpreters are used if necessary, and this may appear on the IT system but data is not collected on this. The statutory obligation of the SCT to assist complainants extends to the provision of professional interpreters if required by the complainant.

The SCT records the main language spoken at home but data is not collected on this. In terms of demographic data, the SCT collects information on age, gender, geographical location, ATSI status (although the data is not kept).

**Assistance agencies**

**Public Interest Law Clearing Houses and other community legal service bodies**

**Queensland PILCH**

Queensland PILCH (‘QPILCH’) established the Self Representation Service (‘SRS’) in 2007 in the District Court, Supreme Court and Court of Appeal of Queensland. The SRS is modeled on the Citizen’s Advice Bureau self representation service which operates at the Royal Court of Justice in London. A Self Representation Service now also operates in the Queensland Civil and Administrative Tribunal (QCAT) and a pilot program has been established in the Brisbane registries of the Federal Court and the Federal Magistrates Court. The types of matters that the SRS will deal with in the Federal Court and Federal Magistrates Court are:

- Bankruptcy;
- Judicial review;
- Anti-discrimination;
- Competition and consumer;
- Information privacy; and
- Fair work.

The SRS aims to assist self-represented parties to:
understand the law and the rights and perspective of the other party;
observe court and tribunal rules and procedures;
be aware of potential orders and the effect of not complying with orders; and
present their case in the best possible manner.

Data has been collected by QPILCH on the SRS in the Queensland District, Supreme and Court of Appeal courts and QCAT on:

- Total numbers of applications received and appointments provided;
- Referral sources;
- Whether prior legal advice has been received and the source of legal advice;
- Role of the applicant to SRS in proceedings (that is, potential plaintiff/applicant, potential defendant, plaintiff/applicant (matter on foot) and defendant/respondent (matter on foot);
- Nature of disputes or proceedings
- Demographic information of clients including geographical location, age, gender, relationship between role and gender, financial resources and income, income source
- Other barriers to access to justice including disability, non-English speaking, internet access, capacity, conflict of interest
- Use of mediation.

QPILCH also gathers information from people once they have completed using the SRS via a Client Evaluation Form. A 2012 summary of Client evaluations of the SRS 2007-2011, measuring ‘Accessibility, Contact, Understanding, Confidence and Satisfaction’ across the five year period found that:

- Clients were self-represented for a range of reasons. The most frequent reasons for self-representation included not being able to afford a lawyer, not qualifying for Legal Aid, as well as believing that they could handle the case themselves.
- Clients also listed barriers to having their case heard properly. The cost of legal assistance, understanding court procedures and the preparation of court forms and documents were listed as the top three barriers.
- It was found that approximately a quarter of the survey respondents felt that they would have benefited from counselling for emotional, non-legal support. The most frequently listed source of help on the day of the hearing came from registry staff, followed by the Judge and then the SRS.
- Finally, many clients commented that they were satisfied with the SRS or that it had been a positive experience. Clients suggested that the Service could be improved by providing more information on court procedures and by having example cases available to clients.

In a recent one-off study of the pilot Self Representation Service in Federal Court and Federal Magistrates Court in Brisbane information was collected by a
researcher on the demographics of respondents, the understanding of the purpose of PILCH services, number of referrals, participant views on the most important stage for assistance. The study, conducted after the pilot service had been operating for 8 months, found that the service was proving successful in providing legal advice and assistance to SRLs. In particular the SRS was assisting to divert SRLs away from the court process altogether leading to cost savings on resources and court time. The benefits of a service like the SRS which emphasizes building relationships between the SRL and the assisting solicitor, over a ‘door of the court’ service which has been the traditional approach, was highlighted in the study.

**PILCH Victoria**

PILCH Victoria offer services outside of the courts and tribunals. The service is similar to that offered in Queensland with navigation assistance, help with information identification collection and interaction with court and tribunal requirements. Where legal expertise is required, people are provided with appointments and in some instances legal representation. The service operates from its own premises and attracts support from 800 legal firms.

PILCH (Vic) has examined in the past whether to establish a similar project to QPILCH but concluded such a program was not warranted in Victoria because of the strong pro bono service already existing which enables PILCH Victoria to offer legal assistance. Because the Victorian pro bono system is very strong SRLs are already going to courts with a lot of information – it would be rare for someone to go to court without some sort of advice. It was explained to the Project researchers that QPILCH arrangement might stretch the existing pro bono resources and clinics. Further a QPILCH arrangement would require additional funding to be sourced by PILCH Victoria.

In terms of the information that should be collected on SRLs the representative from PILCH Vic identified the following factors:

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64 Cate Banks, ‘Evaluation of effectiveness of Queensland Public Interest Law Clearing House – Self Representation Service in Federal Court and Federal Magistrates Court Brisbane.’ (Cate Banks Consulting, June 2012), 21-22.
Need to collect the numbers of self-represented litigants and how that correlates to changes in Legal Aid funding guidelines.

Information on why self-represented litigants represent themselves

The representative from PILCH Victoria expressed a view that it may be inappropriate for the Courts to collect data on the broader issues relating to self-represented litigants – that maybe this role should rest with another body or government department. In terms of the particular problems that SRLs pose for courts, PILCH Victoria has been informed anecdotally by Victorian Court representatives and judges that:

- The querulous self-represented litigants are the most problematic
- Problems arise in call-over lists where approximately 50 percent are self-represented litigants and this means that directions take much longer. This means that direction hearings involving SRLs might take the whole morning or more in court time, as opposed to 1 hour if the person was represented.
- Associate/registry staff have considerably more time taken up with emailing, phoning, communicating with SRLs.
- The length of trial is longer in matters involving SRLs.

The representative from PILCH Victoria informed researchers, that based on her experience, the types of initiatives that have assisted SRLs in the federal jurisdiction have included: relaxed Court rules in the Federal Magistrates Court which enables more people can navigate the court; and Pro-Bono Order under court rules in the Federal Court and Federal Magistrates Court which is commonly used in Migration matters. Also, it had been reported to her that judges believed it would assist them to have self-represented litigants assisted early in proceedings with paperwork and case management tasks.

PILCH Victoria is collecting data on the individual outcomes of cases but for internal purposes only and uses a storytelling framework. There is some information contained in the PILCH Victoria Annual Report about SRLs but this is not provided in great detail.

**National Indigenous Family Violence Prevention Legal Service**

The National Indigenous Family Violence Prevention Legal Service reported that it did not generally collect data on SRLs but that any data collected is provided to the Attorney General’s department.

**Aboriginal and Torres Strait Islander Legal Services (Queensland) Ltd**

The Aboriginal and Torres Strait Islander Legal Services (Queensland) Ltd reported that all the legal services are connected to an IT system and field in which they record the circumstances of the case, but do not record if the person was represented or an SRL. The service will record if they ‘referred’ the person elsewhere and people are routinely referred to the Supreme Court SRL Service in QLD. They will then shepherd the person through that or ‘work alongside’ that
person. The ATSILS (Qld) does not collect data on whether the person receives assistance, or the reasons for self representation or the reasons for changes in self representation.

**Legal Aid Organisations**

**Legal Aid NSW**

Legal Aid NSW provides extensive assistance to self represented litigants through information, advice, minor assistance and duty services, but does not routinely collect data on self represented litigants except in relation to those services. Legal Aid NSW also keeps some statistics on the number and reasons for refusals for grants of legal aid. However, researchers were informed that these numbers are not a reliable indicator of unmet need for legal aid as many people do not apply for legal aid because they consider or are advised that they would not be eligible.

A 2011 client satisfaction survey of the advice and minor assistance services of Legal Aid NSW, found that:

- 9% of the sample reported they had represented themselves in a court or tribunal hearing related to the issue they had sought advice on.
- Excluding those who had not yet had a hearing (40%) or did not expect they would have one (11%), 18% had represented themselves.
- 65% of those who either had represented themselves or were expecting to do so at a hearing (n=238) reported they had received assistance in representing themselves.
- 15% of these respondents said they were still waiting to find out whether assistance would be given. This might have been a wait for approval of legal aid, or to see whether additional help that had been offered would in fact be provided.

The Client Satisfaction Survey also reported that the types of assistance given to self represented litigants by Legal Aid NSW were varied and included explanations on what to do, referrals to other sources of help, pamphlets and other information, had phone calls made, letters written or sent on the clients behalf, given something to use in court, helped with paperwork, referred to Duty Solicitor, and mediation arranged.

Legal Aid NSW is conducting a series of pilots which include additional ‘alongside’ services for litigants for which they are collecting data. Duty services are provided by Legal Aid NSW at the local court, ADT, Family Court, and the Children's Court. The Family Law Duty Lawyer Early Intervention Service is one ‘alongside’ service that supports an early intervention service and provides duty lawyer assistance in the family court to self-represented litigants. The aim of the service is to assist the SRL to take more appropriate and effective action to
resolve their family law matter and to improve referral pathways. This service is currently being evaluated at Parramatta Family Law Court.

The Duty Service program is another pilot program which works through the court system where the court adjourns a matter at Legal Aid NSW’s request and an appointment is made for the SRL to attend an appointment at Legal Aid NSW to be assessed for aid. Lawyer’s at this time fill in an ‘advice form’ which may have more detail than what is recorded on the IT system and may have data on the reasons for SRL status.

The data collected by Legal Aid NSW concerns data about the access to:

- Information services
  - Law type (crime, family or civil)
  - State or Commonwealth matter
- Advice, minor assistance and duty services (‘in house’)
  - Law type
  - Matter group
  - Matter type
  - Advice and minor assistance
  - Gender
  - Date of birth
  - Aboriginal status
  - Source of referral
  - Referral destination
  - Employment status
  - Centrelink benefits
  - Country of birth
  - Year arrived in Australia
  - Language spoken
  - Interpreter
  - Homeless
  - Postcode
  - Suburb
  - Date.

Legal Aid NSW do not have information about what happens to those people who are not assisted by the programs. As with other legal aid bodies, once a person is defined as ineligible for a legal aid service there is no way of telling whether that person then goes on to become self-represented in a court, tribunal or other process.
Other Legal Aid Commissions

Victoria Legal Aid and Legal Aid Commission of Tasmania reported that they do not collect data on self represented litigants. The only data relating to this issue in Victoria is the recording of refusals of legal aid. However, once this occurs, there is no way of knowing if the person then goes on to become self represented. There is a similar situation in Tasmania although there is data collected about SRLs indirectly through the Duty Lawyer statistics which are found in the Legal Aid Commission of Tasmania Annual Report. The Legal Commission of Tasmania does not seek out opportunities to engage with SRLs or collect data on self represented litigants as it is not relevant to its work.

Both Legal Aid ACT and the Legal Services Commission of South Australia did not collect any data on self represented litigants. In the case of South Australia, legal aid is not provided for civil matters.