THE IMPACTS OF SELF-REPRESENTED LITIGANTS ON CIVIL AND ADMINISTRATIVE JUSTICE: ENVIRONMENTAL SCAN OF RESEARCH, POLICY AND PRACTICE

Liz Richardson, Genevieve Grant and Janina Boughey
The Australasian Institute of Judicial Administration Incorporated (‘AIJA’) is an incorporated association affiliated with Monash University. Its main functions are the conduct of professional skills courses and seminars for judicial officers and others involved in the administration of the justice system, research into various aspects of judicial administration and the collection and dissemination of information on judicial administration. Its members include judges, magistrates, legal practitioners, court administrators, academic lawyers and other individuals and organisations interested in improving the operation of the justice system.

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Dr Liz Richardson is the principal author of this report: she conducted the research and wrote the Environmental Scan. Her co-authors, Dr Genevieve Grant and Dr Janina Boughey, created the original proposal for the project and helped shape the final report with comprehensive editing, providing comment and feedback, assisting with the drafting of short sections, and contributing to the ideas for future directions outlined in Part 5.

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Australia and New Zealand
Executive Summary

In civil and administrative justice policy and practice, there is increasing interest in the impacts and experiences of self-represented litigants (SRLs). At the same time, the justice sector recognises the need for evidence-based programs and interventions to improve access to justice and system performance. These developments make this an opportune time to review recent evidence of the impact of SRLs on the civil and administrative justice systems and the suite of policy responses.

In 2017, the Australasian Institute of Judicial Administration (AIJA) commissioned the Australian Centre for Justice Innovation (ACJI) at Monash University to conduct an Environmental Scan of current research on SRLs in the civil and administrative justice system and court and tribunal responses to SRLs.

For the purposes of this Environmental Scan, the impact of SRLs on civil and administrative justice is understood as incorporating the prevalence of self-representation and its effects on the experiences of litigants and other justice system stakeholders, including judicial officers, tribunal members and court and tribunal staff. The objective of this Environmental Scan is to strategically review a range of recent and leading trends, research methods, outputs and data, across grey (government and industry) and academic literature. By providing a rapid review of the evidence as at April 2018, the Scan seeks to assist the AIJA to identify relevant gaps in the SRL evidence base, with a view to the assessment of potential research needs.

The scope of the research for this Environmental Scan includes:

- an up-to-date literature review (incorporating academic and grey literature sources);
- analysis of leading practices in SRL policy and programs in Australian courts and tribunals; and
- analysis of online resources provided by key organisations from relevant jurisdictions and policy sectors.

Specifically, the Scan:

- Synthesises the findings on SRLs from major reports and research studies conducted since 2012. These reports and studies include:
  - ACJI’s major review of data collection practices relating to SRLs in the Australian federal civil justice system (2012);
  - the Productivity Commission’s Report on Access to Justice Arrangements (2014);
  - the Victorian Government Department of Justice and Regulation’s Access to Justice Review (2016);
  - the Law and Justice Foundation of NSW’s Legal Australia-Wide Survey (2012);
  - Professor Julie Macfarlane’s study of SRLs in Canada (2013);
  - Professor Liz Trinder and colleagues’ study of SRLs in family law cases in the United Kingdom (2014);
  - Dr Denise Weybury’s PhD thesis examining the impacts of SRLs on the County Court of Victoria and High Court of Australia (2014); and
  - Dr Bridgette Toy-Cronin’s PhD thesis examining the experience of SRLs in New Zealand (2015).
- Presents an analysis of the evidence on the prevalence, impact and outcomes of SRLs in Australia and New Zealand, based on available court and tribunal data.
- Provides an overview of leading practices in SRL policy and programs in Australian courts and tribunals and evidence of their effectiveness.
The evidence on SRLs

Who are SRLs?

- Assumptions are frequently made about who SRLs are and why they are without representation. The research shows that SRLs are a diverse group, a substantial proportion of whom are socially and/or economically disadvantaged.
- Most SRLs are self-represented because they cannot afford a lawyer. There are however a range of other, overlapping reasons why a person may not have representation.
- Many SRLs receive legal advice or assistance at some point during their legal proceedings. The shifting nature of an individual’s representation status over the course of a matter makes it difficult to assess the prevalence of SRLs in many settings.

What do we know about the experiences of SRLs?

- The research consistently shows that being an SRL can be extremely challenging.
- Many SRLs have difficulty understanding procedural and legal requirements and presenting their cases. Many also feel out of place in the justice system.
- SRLs have varying experiences of interactions with court and tribunal staff, judges and tribunal members.

What do we know about the prevalence of SRLs?

- There is a widely-held perception that the number of SRLs is increasing in the Australian civil and administrative justice systems.
- There is limited data to support this perception. There are many barriers to collecting adequate and accurate data on SRLs, including the difficulties in defining who is an SRL, problems with the quality and reliability of data, and the organisational belief that SRL status is not useful operational data.
- Analysis of the available data tends to suggest that the perceived growth in SRL numbers outstrips reality. There appears to be an increase in SRL numbers in some settings, over particular periods of time.
- The reasons for growth in SRL numbers in some settings may relate to law reform and changes in practice that contribute to peaks in particular types of proceedings in specific forums.
- Generally, there tends to be a higher proportion of SRLs in tribunals and lower courts than in superior and appellate courts.
- Importantly, endeavours to enhance access to justice using digital means (including Online Dispute Resolution) may contribute to a new wave of increased access to courts and tribunals by SRLs.

What do we know about the impact of SRLs on judges and tribunal members?

- There is a perception amongst judges that SRLs create a range of difficulties. Judges need to balance the obligation to assist SRLs in order to ensure a fair hearing against the need to remain (and be perceived to be) impartial.
- Judges perceive SRLs as taking up more time than represented litigants.
- Judges take a range of approaches in response to these challenges. The hearing-related experience of an SRL likely depends on which judge hears their case.
What do we know about the impact of SRLs on opposing parties and lawyers?

- The research suggests that SRLs tend to increase costs and expense for opposing parties.
- Opposing parties sometimes feel that the level of assistance given to an SRL is unfair.
- SRLs present challenges for opposing lawyers in negotiation and strategy.

What do we know about the impact of SRLs on court and tribunal staff?

- Court staff experience difficulty maintaining the line between providing information and providing legal advice.
- Some SRLs can take up considerable time of court and tribunal staff.

What do we know about the impact of SRLs on court and tribunal processing time?

- There is a perception that SRLs take up more time and resources than represented litigants. There is no robust empirical evidence to support this.
- Evidence on the procedural impact of SRLs is mixed.
- There is some evidence suggesting that SRLs are less likely to settle, or settle later in proceedings. This has the potential to contribute to the cost and duration of proceedings, but such impacts have not been quantified.

What do we know about the impact of SRLs on matter outcomes?

- There is limited data on outcomes for SRLs, due to the difficulties of collecting data, the paucity of longitudinal data in Australian courts and tribunals, and the multiple and confounding factors that contribute to case outcomes where litigants are unrepresented.
- The available data tends to suggest that SRLs experience less favourable outcomes in the civil and administrative justice system compared with represented litigants.
- However, this may not solely be the result of less effective advocacy. The disinclination of SRLs to settle or withdraw at an early stage may mean that less meritorious cases proceed to hearing, affecting outcomes.

Responses to SRLs in Australian courts and tribunals

The recent reports and research on SRLs highlight that more needs to be done to accommodate, understand and assist SRLs. This includes:

- cultural change in the way SRLs are perceived, to recognise that the vast majority are not reflective of the negative stereotypes;
- development of appropriate self-help information and tools;
- expanded access to advice and assistance for SRLs; and
- training and guidelines for court and tribunal staff, judicial officers and tribunal members.

Australian courts and tribunals have developed a range of practices, policies and programs to assist SRLs, judges, tribunal members and court staff. These fall into two main categories:

- self-help information and tools (court-based and community-based); and
- tools for the judiciary, tribunal members and court staff.

Some jurisdictions have implemented or are considering other systemic changes.
Part 3 provides an overview of these various responses. It notes that it is impossible to definitively assess the comparative effectiveness of the various interventions assisting SRLs due to the lack of independent evaluation. Only a few programs have been independently evaluated.

Key conclusions

- There is now good quality empirical evidence available about the experiences of SRLs in some forums. There are consistent themes regarding the experiences of SRLs in recent large studies in Canada by Macfarlane, and in smaller studies in New Zealand by Toy-Cronin and Trinder et al in the UK.
- Additionally, recent research has comprehensively canvassed the data-related challenges at the court and tribunal level. The lack of consistent, high quality data relating to SRLs is a considerable barrier to assessing their impact on courts and tribunals, and the impact of self-representation on outcomes. Courts and tribunals need assistance to collect better data on SRLs to inform policy and practice. Additional one-off studies about the prevalence of SRLs are unlikely to substantially advance understanding on this issue.
- Major academic studies highlight that judges, court staff and lawyers find dealing with some SRLs challenging and all have found ways to manage those challenges. Nonetheless, while SRLs increase the workload of personnel and the court, they are a fact of life. SRLs as a whole may not be experienced as problematic, but a small cohort of SRLs (variously described as persistent litigants or querulous litigants) are particularly challenging to deal with.
- Little is known about the impact that SRLs have on delay and SRLs’ use of court resources in so far as being able to quantify with specificity how much longer or shorter cases with SRLs are, the impact on outcomes and on other parties.
- While Australian courts and tribunals have implemented a range of policies, programs and practices responding to SRLs, there is limited independent empirical evidence about whether or not they have been successful. We do know that:
  o there are good reasons from an access to justice viewpoint to improve the quality and accessibility of information available to SRLs on court websites;
  o SRLs prefer and benefit from one-on-one, face-to-face procedural assistance; and
  o case management approaches may provide SRLs with the consistency and support they require.

Key recommendations

- Based on the analysis provided in this Environmental Scan, there is a pressing need to better understand which SRL-related interventions and responses work best to improve outcomes for courts, tribunals and for SRLs, and optimise the use of justice system resources. In particular, a more robust evidence base in Australia and New Zealand is required to establish the effectiveness of innovations and interventions in SRL case management and support services. Such evidence would be valuable for facilitating information-sharing between forums and jurisdictions (both in terms of what works and what does not), and to build the case for resources to establish and maintain successful interventions.
- Work is required to identify measures that best assist judicial officers, tribunal members and court and tribunal staff when dealing with SRLs. One area that remains particularly challenging is the divide between legal information and legal advice and how judicial
officers, tribunal members and court staff negotiate and manage that divide. This specific area is ripe for further investigation, particularly in light of the increasing turn toward legal technology and online resources to address justice system users’ needs.

- There are a number of ways that the AIJA could assist in addressing the continuing research and knowledge deficits around SRLs’ impacts on and experiences of civil and administrative justice in Australia. Several of these recommendations are consistent with the themes and future directions identified by the AIJA and Federal Court of Australia in their work in this field almost 15 years ago. These relate particularly to the potential for AIJA to provide a central clearinghouse and coordination function for SRL developments. The AIJA could act as a coordinating body across Australian and New Zealand jurisdictions, to improve information for SRLs and resources and guidance for those working in courts and tribunals. Specifically, it could consider:
  - Creating a SRL clearinghouse that gathers information about SRLs in Australia and New Zealand together in one location to assist SRLs, judges, the legal profession and court staff.
  - Bringing Australian and New Zealand courts and tribunals together to discuss and develop initiatives to:
    - find solutions to the persistent challenges of institutional data collection;
    - provide clear guidelines for judges, court staff and SRLs and other practical assistance on the divide between legal information and legal advice; and
    - explore how the increasingly consistent recommendations of the leading academic research and government inquiries could best be implemented and evaluated, and findings shared.
  - Developing accessible online resources for SRLs, similar to the Canadian NSRLP resource ‘Working with SRLs: Ideas and Suggestions from the Bench.’

- To support the development of the evidence base on effectiveness, AIJA could consider facilitating collaborations between courts, tribunals and research partners to evaluate interventions and responses to support SRLs and the forums in which they appear.
Part 1: Background and Research Approach

1.1 Introduction

The impacts and experiences of self-represented litigants (SRLs) are increasingly recognised as pressing policy issues in civil and administrative justice settings. In 2017, the Australasian Institute of Judicial Administration (AIJA) commissioned the Australian Centre for Justice Innovation (ACJI) at Monash University to conduct research in this important field. Both the AIJA and ACJI have undertaken work in this area previously. The AIJA, with the Federal Court of Australia, published proceedings of the Forum on Self–Represented Litigants (Sydney, 17 September 2004). This material guided ACJI in the production of its 2012 review for the Commonwealth Attorney-General’s Department of pertinent data collected by federal courts and tribunals. In the last six years, SRLs have also been the subject of attention in major access to justice reviews by the Productivity Commission and the Victorian Department of Justice and Regulation, as well as in leading academic research.

SRLs continue to be a topic of interest for those working in courts and tribunals and justice systems more broadly. There is a persistent perception that self-representation is on the rise and that it can be problematic for judges, tribunal members, court and tribunal officials, and lawyers, not to mention the SRLs themselves. The chief responses in policy and practice include services to assist litigants represent themselves, provision of pro bono services, and support from courts and tribunals to improve interactions and experiences with staff. Given the considerable activity in this area, it is an opportune time to review recent evidence of the impact of SRLs on the civil and administrative justice systems and the effectiveness of responses that have been developed. This Environmental Scan will provide that account, and a valuable resource for decision-making about the associated research needs of AIJA and the communities it serves.

1.2 Report scope and research approach

The objective of this Environmental Scan is to strategically review a range of recent and leading trends, research methods, outputs and data, across grey (government and industry) and academic literature. By providing a rapid review of the evidence, it seeks to assist the AIJA to identify relevant gaps in the SRL evidence base, with a view to the assessment of potential research needs.

This Environmental Scan focuses on evidence of the impact of SRLs in Australian and New Zealand civil and administrative justice systems. It also draws on pivotal international sources from the United Kingdom, Canada, Ireland and the United States. For the purposes of this report, the impact of SRLs on civil and administrative justice is understood as incorporating the prevalence of self-representation and its effects on the experiences of litigants and justice system stakeholders, including judicial officers, tribunal members and court and tribunal staff.

The scope of the research for this report is:

- an up-to-date literature review (incorporating academic and grey literature sources);
- analysis of leading practices in SRL policy and programs in Australian courts and tribunals; and
- analysis of online resources provided by key organisations from relevant jurisdictions and policy sectors.
1.3 The Australian Centre for Justice Innovation and the Research Team

ACJI strives to improve justice systems through research, education and community engagement programs. ACJI was established in 2011 as a joint initiative between the Faculty of Law at Monash University and the Australasian Institute for Judicial Administration.

Justice environments are rapidly evolving. Technology is disrupting legal services and providing opportunities for legal systems to become more accessible and efficient. The rise of non-adversarial practices has shown that there can be better alternatives to traditional court processes. The emergence of innovative approaches to justice creates a need for policy makers, courts and tribunals, law firms, legal services, the legal profession, educators and the community to adapt and respond.

To address this need, ACJI conducts high quality research and evaluation to support effective policy and practice innovation. ACJI’s research provides an evidence base for improvements to justice systems and increased accessibility for system users and stakeholders. Our work builds on the Monash Law’s strong history of research excellence and promoting social justice.

ACJI’s research, education and engagement programs focus on justice innovation in the following key areas:

- Dispute resolution and civil justice: ADR (including mediation, conciliation and arbitration), civil litigation and assessing system performance and procedural reform
- Access to justice: Making the law and legal systems more user-friendly and accessible, including through the use of technology and service innovation
- Non-adversarial justice: Restorative justice, procedural justice, problem-solving approaches and therapeutic jurisprudence
- The future of lawyering and the legal profession: Sustainability and wellbeing in the legal profession, the dynamics of legal services markets, and lawyering and legal education in the 21st century
- Legal technology and innovation: Online dispute resolution, legal profession disruption and digital legal information
- Evidence-based research: Empirical legal research and evaluation to build the evidence base for driving reform and better practice.

The Research Team, comprising Dr Liz Richardson, Dr Genevieve Grant, Dr Janina Boughey and A/Prof Becky Batagol, is drawn from ACJI.

1.4 AIJA Project Steering Committee

The Research Team thanks the AIJA SRL Project Steering Committee for its input into this project. The members of the Steering Committee are:

- Professor Greg Reinhardt, Executive Director, AIJA.
- Justice Sue Kenny, Federal Court of Australia.
- Justice Murray Aldridge, Family Court of Australia.
- Dr Bridgette Toy-Cronin, Director, University of Otago Legal Issues Centre, New Zealand.

1.5 Terminology used in this report

A range of terminology is used to describe SRLs, including litigants in person, lay litigants, pro se litigants and unrepresented litigants. This report refers to SRLs, consistent with previous works conducted by ACJI. As Richardson, Sourdin and Wallace noted there is no standard
definition of SRL. This report adopts the definition of SRL used in ACJI’s 2012 report, namely ‘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’. This definition does not distinguish between persons who are unrepresented in legal matters by choice or by circumstance.

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Part 2: Strategic Evidence Review

2.1 Background to the contemporary SRL evidence base

SRLs have been a focus for justice policy and administrators for numerous decades in Australia and countries including New Zealand, Canada, the United States, and the United Kingdom. This Environmental Scan examines developments since 2012, when ACJI produced its previous review of the literature. The Scan draws on several major inquiries into access to justice and legal need as well as studies of SRLs in Australia, New Zealand, Canada and the United Kingdom. Further, it reviews the latest activities in courts and tribunals in Australia and key overseas jurisdictions in response to SRLs.

There are similarities between the current SRL discussion and those occurring at the time of the AIJA and Federal Court of Australia’s Focus on Self-Represented Litigants Report in 2004 and ACJI’s work in 2012 (discussed in 2.2.1). Judicial officers, tribunal members, court staff and lawyers continue to grapple with how to assist SRLs while balancing other aims of the justice system. These include the need for judges and tribunal members to remain impartial, ensuring proceedings are conducted fairly, protecting the rights of other parties and resolving matters efficiently. Where courts and tribunals directly assist SRLs, they need to be careful to maintain the boundary between the provision of legal information and legal advice. SRLs are often perceived as a problematic presence in courts and tribunals, creating delays and consuming more time and resources than represented litigants.

Since 2012, however, a range of important research evidence has emerged. This work has contributed to the development of a deeper, more nuanced and evidence-based understanding of the experiences of and challenges facing SRLs. Through review of the newer material, this report seeks to identify opportunities to inform responses by courts and tribunals, as well as highlighting gaps that are yet to be addressed.

The right to appear on oneself is enshrined in Australian legislation and the High Court of Australia has also upheld the right of Australians to represent themselves in court. Some courts have specific rules with regards to SRLs such as Rule 4.01(1) of the Federal Court Rules 2011 (Cth) and Rule 41.10 of the High Court Rules 2004 (Cth). In the High Court of Australia most SRL matters are dealt with on the papers. The right to appear for oneself exists alongside the right to a fair trial, which is found in case law, in international human rights instruments, and domestic legislation. In Victoria, section 24(1) of the Charter of Human Rights and Responsibilities Act 2006 (Vic) states that ‘a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.’ In the Australian Capital Territory, section 21 of the Human Rights Act 2004 (ACT) also protects the right to a fair trial in civil proceedings.
represented and if a party wishes to be represented they must seek the tribunal’s permission. For example, in the two highest volume areas of the Administrative Appeals Tribunal (‘AAT’) — the Social Services and Child Support and Migration Divisions (which account for over 90 per cent of the AAT’s case load)25 — permission is required for a person to be represented or speak on behalf of a party at a hearing.26 In the other Divisions of the AAT, parties may be represented or unrepresented.27 In some state generalist tribunals there is a right to representation (ACT, South Australia and Western Australia).28 In others there is a presumption against representation, other than in certain cases (for example, where the party is a child), which tribunal members can overturn (NSW, Queensland and Victoria).29 In tribunals where members have a discretion to permit representation, they are required to consider what procedural fairness requires in the circumstances of the case. In some circumstances, refusal to permit representation may result in a tribunal hearing being procedurally unfair and thus invalid (for example, where a person is incapable of representing themselves, where the consequences of a decision are particularly serious, where the other party is represented, or where the legal and factual issues involved are particularly complex).30

The Productivity Commission expressed concern in its 2014 Access to Justice Arrangements Inquiry Report that some tribunal members tend to grant leave to be represented as a matter of course. The Report recommended that legal representation in tribunals be limited in order to facilitate equality and efficiency in proceedings.31 This perception that legal representation tends to reduce the efficiency of tribunal proceedings is the opposite of the commonly held perception in courts.

This report explores some of these tensions and consider other aspects of the impact of SRLs in courts and tribunals in the light of the latest evidence. The next part provides an overview of the leading research and the light it sheds on key questions about SRLs.

2.2 Key research on SRLs

2.2.1 ACJI’s 2012 Review

In 2012, ACJI published a comprehensive review of SRLs in the Australian federal civil justice system. This work comprised a Literature Review32 and a Final Report,33 which identified a range of research gaps and opportunities. The best Australian SRL evidence at the time came from government and law reform reports (often relating to reviews of access to justice or the legal aid system), one-off studies and reports and data reported in court and tribunal Annual Reports.34 ACJI’s Final Report explored SRL data gaps and concluded that the evidence base for understanding the SRL phenomenon was limited.

26 Administrative Appeals Tribunal Act 1975 (Cth) s 32(2); Migration Act 1958 (Cth) s 366A.
27 Administrative Appeals Tribunal Act 1975 (Cth) s 32(1)(a).
28 ACT Civil and Administrative Tribunal Act 2008 (ACT) s 30; South Australian Civil and Administrative Tribunal Act 2013 (SA) s 56(1)(b); State Administrative Tribunal Act 2004 (WA) s 39(1).
29 Civil and Administrative Tribunal Act 2013 (NSW) s 45(1); Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 43; Victorian Civil and Administrative Tribunal Act 1998 (Vic) s 62. Note that in Victoria, the presumption is effectively overturned in most administrative law cases due to the fact that government agencies may be represented, and there is a rule that where one party is represented, the other may be too (s 62(b)(b)-(e) and (1)(b)(iii)).
32 Richardson, Sourdin and Wallace, above n 2.
33 Richardson, Sourdin and Wallace, above n 3.
34 Richardson, Sourdin and Wallace, above n 2.
While Nicholson has noted that SRLs do not owe the same obligations to the court as a legal representative, they do have duties of ‘disclosure to the court, of avoidance of abuse of the court process, to not corrupt the administration of justice and to conduct cases efficiently and expeditiously’. In Victoria, SRLs owe overarching obligations under the Civil Procedure Act 2010 (Vic) as participants in proceedings (section 10). These obligations include acting honestly, having a proper basis for making a claim and using reasonable endeavours to resolve disputes. These overarching obligations have the potential to assist parties and courts in addressing some impacts of SRLs on delays and use of court resources. Though SRLs' compliance may be impeded by their lack of legal and procedural knowledge and there may difficulty enforcing these obligations against SRLs. Importantly, the Civil Procedure Act does not apply to matters before the Victorian Civil and Administrative Tribunal.

The Court of Appeal of New Zealand has confirmed the right of individuals ‘of sufficient age and capacity’ to self represent. The right is also enshrined in legislation in New Zealand. The right to litigate in person can also be understood through theories about civil justice enabling citizens to enforce their civil rights. While the courts exist to facilitate this, limits placed on access to courts mean that justice is rationed. Toy-Cronin has argued that there are:

…tensions between fostering an appearance that the court is accessible to LiPs [litigants in person], while at the same time trying to encourage LiPs to seek legal advice. This [is] particularly challenging given that options for legal advice [are] so limited.

Toy-Cronin notes that there is a ‘gap between the formal right to access the courts in person and the difficulty in doing so.’ Some commentators have challenged the idea of an unqualified right to self-representation, arguing that it should be balanced against the adverse consequences for the administration of justice. Assy suggests, for example, that it is difficult, if not impossible, to ameliorate the deficiencies of self-representation by making the law simpler to understand or by assistance from the judge or from a layperson.

The goal of tribunals is generally regarded as providing a speedy, accessible, fair and cost-effective method of dispute resolution. For this reason most tribunals are unencumbered by evidentiary rules and formal court processes and tend to adopt less formal and more flexible processes. This means that it should be easier for SRLs to navigate tribunals, compared with courts. Indeed, in some tribunals, or divisions of tribunals, the norm is for parties not to be

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11 Kirimof and Dober, ibid.
12 Civil Procedure Act 2010 (Vic) ss 16-26.
13 Kirimof and Dober, above n 10.
16 Lawyers and Conveyancers Act 2006 (NZ) s 27(1)(a). Note that the New Zealand Bill of Rights Act 1990 (NZ) explicitly mentions the right with respect to criminal charges (s 25(e)) but not in civil cases.
18 Ibid, 152.
19 Ibid, 153.
20 Rabeea Assy, Injustice in person (Oxford University Press, 2015).
21 For a review and rebuttal of Assy’s arguments see Bridgette Toy-Cronin, ‘A defence of the right to litigate in person’ (2016) 37(1) Oxford Journal of Legal Studies 1.
The major themes and assumptions about SRLs canvassed in the Literature Review included:

- The perceived rise in SRLs was believed to be largely due to legal aid cuts and increased legal costs\(^{35}\) but the link was not clear-cut.\(^{36}\)
- The term SRL may obscure the reasons for becoming an SRL, litigants’ circumstances and assistance they may have had prior to coming to court or during court hearings.\(^{37}\)
- SRLs typically self-represent because they cannot afford legal representation. Other leading reasons why SRLs may choose to self-represent include disenchantment with lawyers, a belief that they do not need a lawyer to present their case, a wish to air grievances or seek revenge on the other party, and feeling equipped to self-represent due to other sources of advice and assistance.\(^{38}\)
- There is a perception that SRLs are at a disadvantage in terms of adequately understanding court rules and procedures, the language of the law and in representing themselves in court.
- The attitude and approach to SRLs in a particular court or tribunal depends on whether self-representation is the norm or whether legal representation is more usual. Where self-representation is the norm, processes are usually more tailored to self-representation.\(^{39}\)
- The impact of self-representation on the SRL and on the justice system depends on a diverse range of factors, including the nature of the dispute, the extent to which the SRL has been active or inactive in proceedings, 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.\(^{40}\)
- SRLs are perceived as problematic for courts (but less so for tribunals), requiring more time and presenting a greater likelihood of requiring a hearing, leading to increased costs for all parties, and placing additional, perceivably onerous, obligations on judicial officers.\(^{41}\)
- SRLs often change representation status during proceedings and may be better described as partially represented. They may also be inactive or active for periods during the legal process.\(^{42}\)


\(^{36}\) Richardson, Sourdin and Wallace, above n 2, 15, citing 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 Council of Australia, *Erosion of Legal Representation in the Australian Justice System Research Report* (February 2004). However, the link between changes to legal aid funding and self-representation is by no means clear cut as discussed in Family Law Council, *Litigants in Person: A Report to the Attorney-General prepared by the Family Law Council*. (Canberra, August 2000), 9-11.

\(^{37}\) Richardson, Sourdin and Wallace, above n 2, 10-11.


\(^{39}\) Richardson, Sourdin and Wallace, above n 3, vi.


\(^{42}\) Richardson, Sourdin and Wallace, above n 2, 11.
There is some evidence that matters involving SRLs are more likely to be withdrawn, settled or abandoned, but not all cases involving SRLs will take longer, for example in family law matters.

These themes were also reflected in the overseas literature from New Zealand, the United Kingdom, Canada and the United States and continue to arise in the more recent literature discussed in this Scan.

A number of deficiencies in the literature and information about SRLs were highlighted by Richardson, Sourdin and Wallace in the Literature Review and Final Report, including:

- Divergent SRL definitions and inconsistency among court and tribunal staff regarding the collection of SRL data (which may arise because the lack of relevant mandatory data collection in some case management systems).
- The lack of data collected by courts and tribunals on SRLs, coupled with a lack of knowledge within courts and tribunals about what data to collect and how to best collect it within the case management systems.
- Data about SRLs is more often found in isolated studies of SRLs rather than featuring in routine and ongoing data collection.
- Data collection is often not a priority for courts or tribunals when proceedings are first initiated.
- Ongoing data collection about SRLs tends to be limited to what is required for immediate operational purposes. Many courts or tribunals deem it unnecessary to collect a broad range of data on SRLs despite the concerns that are consistently raised by courts about the impact of SRLs on processes and staff.
- The collection of data about individual or demographic characteristics, case characteristics and the impact of SRLs on court and tribunal processes is desirable.
- There is a lack of data regarding the use of court and non-court ADR processes by SRLs.
- Some SRLs are seen as problematic because their behaviour can be viewed as unreasonable or difficult (rather than vexatious), but there is almost no data collected in civil jurisdictions that could assist courts or tribunals to better understand or address this issue.
- Changes in representation status are often not captured by court case management systems; often the current status of representation is visible but a history of representation is not captured except on the hard-copy court file. In some courts, the use of interpreters is also often recorded on the hard-copy court file rather than the case management system.
- There was almost no qualitative data about how SRLs experience the justice system.

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44 Australian Law Reform Commission, ibid; Hunter, ibid.

45 Richardson, Sourdin and Wallace, above n 2, paras 2.1, 2.15-2.16.

46 Ibid, 7.

47 Richardson, Sourdin and Wallace, above n 3, 68-69.

48 Richardson, Sourdin and Wallace, above n 2, vi.

49 Ibid, 7.

50 Richardson, Sourdin and Wallace, above n 3, viii.

51 Ibid, vi.

52 Ibid, vi.

53 Ibid, viii-ix. The Family Court of Australia does collect data on vexatious litigants who may also be SRLs see: Richardson, Sourdin and Wallace, above n 3, 73.

54 Richardson, Sourdin and Wallace, above n 3, vi.

55 Ibid, 72.

56 Ibid.
Stakeholder interviews were undertaken with all federal courts and tribunals and legal aid bodies about the data each organisation was collecting on SRLs. The Final Report identified three categories of data that could be collected by courts and tribunals to generate more complete picture of SRLs and tailor services and processes accordingly:

1. Individual or demographic characteristics, including business litigant size and composition and individual litigant demographic characteristics, such as age, gender, income, concession card status, location, country of birth and main language spoken.
2. Dispute characteristics, including the type of matter, processes used, and presence of complex legal or procedural issues.
3. Court and tribunal process data indicating the processes or systems used, including pre-action requirements, case management events, time intervals, case outcomes, case duration and other factors.57

Federal courts, tribunals and other justice agencies fell into three distinct groups in respect of their collection of SRL data: (1) organisations that collected a lot of data about SRLs; (2) those which were infrequent or limited collectors of SRL data; and (3) those that collected limited data in an ad hoc manner.58 Organisations were also differentiated by their management of and use of specific programs for SRLs, with more activity happening in the first group than the second or third.59 There was little consistency in terminology or evidence of a systematic approach to data mining or data presentation across these groups and information exchange about the success of SRL programs was limited.60

The Final Report made a series of recommendations to improve SRL data, including that: changes be made to existing court and tribunal IT systems to collect mandatory data on SRLs; agencies agree on a common definition of an SRL and on how data should be collected and reported; and an integrated data collection.61

2.2.2 Landmark reports on access to justice and legal needs (2012-16)

Since the ACJI study in 2012, two major inquiries and reports have examined access to justice, legal needs and the associated issue of self-representation: the Productivity Commission Access to Justice Arrangements Inquiry Report (2014) and the Victorian Government Department of Justice and Regulation Access to Justice Review (‘VAJR’) (2016). These inquiries drew substantially on the comprehensive empirical investigations undertaken by the Law and Justice Foundation of New South Wales through the Legal Australia-Wide Survey (‘LAW Survey’)62 and other empirical studies, including Richardson, Sourdin and Wallace’s Final Report63 discussed in the previous section. The LAW Survey provides the most extensive empirical insight into the legal needs of Australians, which is important context for understanding the characteristics and experiences of people who present as SRLs in courts and tribunals.

The Productivity Commission defined ‘access to justice’ in the context of civil dispute resolution as meaning

making it easier for people to resolve their disputes according to law by improving the capacity and capability of the justice system, and overcoming barriers to accessing the system. The

57 Ibid, vii-viii.
58 Ibid, 7.
59 Ibid, 7.
60 Ibid, v.
62 Christine Coumarelos, Deborah Macourt, Julie People, Hugh M McDonald, Zhigang Wei, Reiny Iriana, and Stephanie Ramsey, Legal Australia-Wide Survey: Legal Need in Australia (Law and Justice Foundation of New South Wales, 2012).
63 Richardson, Sourdin and Wallace, above n 3.
‘system’ includes formal and informal institutions and processes, as well as information and advice.64

The VAJR defined ‘access to justice’ more comprehensively, as

the ability of people to engage with the many formal and informal aspects of the justice system and to enjoy the benefits of living in a society governed by the rule… which includes considering fair and equitable access to legal information and legal assistance in both civil and criminal matters of law.65

While the concept of access to justice has grown in popularity, there is still no consensus about its meaning. The term differs in meaning depending on the legal context, professional viewpoint, and the court or tribunal at hand.66

These reports both highlight that providing access to justice is a nuanced challenge that requires systemic change on many fronts, inside and outside the legal system. The civil justice system is very broad and people can resolve their disputes through courts, tribunals, ombudsmen, and other dispute resolution processes, but also privately.67 Both the Productivity Commission and the VAJR observed that the cost of accessing the justice system and legal services is prohibitive for many people, particularly vulnerable and disadvantaged litigants.68

The Productivity Commission emphasised that there is no quick fix for improving access to justice but necessary elements include:

- Better coordinated, quality community legal education, legal information and minor advice to help parties resolve their disputes, as well as gateways to legal assistance and referral to low cost and informal dispute resolution mechanisms when the dispute requires it.
- Changes to the provision of professional legal services that could facilitate the provision of discrete task assistance or ‘unbundled’ legal services.
- More work to reduce the expense of litigation.
- More government assistance through funded legal representation for disadvantaged Australians as well as reform to the funding arrangements for legal assistance providers.69

The VAJR made similar observations about the situation in Victoria, highlighting that in considering how to achieve access to justice, it is important to have a good understanding of the legal needs of the community, how people prevent and resolve legal problems and the barriers that they face in accessing justice. To date, there has been little Victorian legal needs research (beyond the LAW Survey in 2008), and gaps in data and research make it difficult to develop civil justice policy and programs in an evidence-based way. The VAJR recommendation that the Victoria Law Foundation (VLF) serve as a research and evaluation body on legal needs and access to justice in Victoria, may lead to the VLF addressing this fundamental gap.

The Productivity Commission Inquiry, the VAJR and a wealth of other research indicates that civil disputes are common and multifarious, and have a significant impact on the lives of the parties. The LAW Survey highlights that understanding the legal needs of the population goes

64 Productivity Commission, above n 31, 77.
66 Peter Salem and Michael Saini, ‘A survey of beliefs and priorities about access to justice of family law: The search for a multidisciplinary perspective’ (2017) 55(1) Family Court Review 120.
67 Productivity Commission, above n 31, 2.
68 Ibid, iv.
69 Ibid, 2.
beyond the demand for legal services. It also involves looking at what legal problems people have, whether they recognise legal problems, how they deal with them and why people deal with their legal problems in the way they do.\textsuperscript{70} Unresolved legal problems can have a substantial impact on peoples’ lives, especially the most disadvantaged in our communities.\textsuperscript{71} These include people with low income, those experiencing unemployment, people with disability, ethnic minorities and people living in remote areas.\textsuperscript{72} Vulnerable groups have particular legal needs and barriers to access to justice that require a targeted, evidence-based response.\textsuperscript{73} The VAJR suggested that the demand for legal assistance and interpreter services is only likely to grow, based on population trends.\textsuperscript{74}

As noted above, the both the Productivity Commission and the VAJR, drew on the LAW Survey, which found that:

- legal problems are widespread and often have adverse impacts on many life circumstances
- some people, most notably disadvantaged people, are particularly vulnerable to legal problems, including substantial and multiple legal problems
- a sizeable proportion of people take no action to resolve their legal problems and consequently achieve poor outcomes, and
- most people who seek advice do not consult legal advisers and resolve their legal problems outside the formal justice system.\textsuperscript{75}

Across Australia, 50 per cent of LAW Survey participants had experienced one or more legal problems in the previous 12 months, with consumer, crime, housing and government problems being the most common problem types.\textsuperscript{76} Multiple legal problems were common with 22 per cent of participants having three or more problems. The majority of legal problems were concentrated among a small group of survey respondents: nine per cent of participants accounted for 65 per cent of reported legal problems.\textsuperscript{77} For people experiencing multiple legal problems, there were distinct clusters of legal problem groups:

1. a combination comprising consumer, crime, government and housing problem groups — that is, problem groups that were particularly prevalent across jurisdictions,
2. a combination dominated by ‘economic and family’ issues, comprising the credit/debt, family and money problem groups,
3. a combination dominated by ‘rights and injury/health’ issues, comprising the employment, health, personal injury and rights problem groups.\textsuperscript{78}

Clustering of legal problems may occur by chance or be connected with one legal problem leading to another.\textsuperscript{79} People who are vulnerable through disability, unemployment, single parenthood, Indigenous heritage, and other socio economic disadvantage are more likely to experience substantial and multiple legal problems.\textsuperscript{80} Survey participants with low education levels and a non-English main language had low levels of prevalence of legal problems, but Coumarelos and colleagues suggest that this may be due to their failure to recognise that they have legal problems.\textsuperscript{81}

\textsuperscript{70} Victorian Government Department of Justice and Regulation, above n 65, 53.
\textsuperscript{71} Productivity Commission, above n 31, 24; Coumarelos et al, above n 62.
\textsuperscript{72} Victorian Government Department of Justice and Regulation, above n 65, 54.
\textsuperscript{73} Productivity Commission, above n 31.
\textsuperscript{74} Victorian Government Department of Justice and Regulation, above n 65, 3.
\textsuperscript{75} Coumarelos et al, above n 62, xiv.
\textsuperscript{76} Ibid, xiv.
\textsuperscript{77} Ibid, xiv.
\textsuperscript{78} Ibid, xiv-xv.
\textsuperscript{79} Ibid, xv.
\textsuperscript{80} Ibid, xv.
\textsuperscript{81} Ibid, xvi.
The multiplicity of legal problems may provide an explanation as to why some SRLs have multiple concurrent actions in different courts and tribunals. In a federal legal system such as Australia’s, one legal problem, such as a family dispute, can span multiple jurisdictions. A person could have matters in the Children’s Court, Family Court and the state Magistrates’ Court in situations where the family has separated, there are allegations of family violence, and the Department of Health and Human Services is involved.

Other key findings from the LAW Survey with direct relevance to SRLs and their experiences include that:

- Legal problems often have considerable adverse impacts on a broad range of life circumstances, including health, financial and social circumstances.
- There are sizeable gaps in the awareness of not-for-profit legal services (outside of legal aid).
- Responses to legal problems included seeking legal advice or assistance, seeking advice from non-legal professionals, communicating with the other side, consulting relatives or friends, using websites or self-help guides, court or tribunal proceedings and formal dispute resolution.
- Action taken for legal problems was grouped into seeking advice (from a legal or non-legal professional) (51% of survey participants across Australia as a whole), handling problems without advice (31%), and taking no action (18%).
- For those people who sought advice for legal problems, legal advice from legal professionals accounted for 30 per cent of people and, overall, people sought advice in only 16 per cent of all legal problems.
- Legal help was received from non-legal advisers including trade unions and professional associations, dispute/complaint handling advisers, government advisers, financial advisers and health and welfare advisers. Cost was a key barrier for accessing legal advisers (23%) but many people preferred to handle legal problems outside legal services through self-help or advice from non-legal professionals.
- Ignoring legal problems, resulting in unmet legal need, was due to reasons including: that it would take too long to resolve the problem (35%); the respondent had bigger problems (31%); it would be too stressful (30%); it would cost too much (27%); the respondent did not know what to do (21%); or it would damage the respondent’s relationship with the other side (13%). Some people also judged that the problem was trivial or unimportant or that taking action would make no difference. People were more likely to seek advice for more substantial legal problems such as accident, crime, family and personal injury problems. People with low education levels, who were unemployed and with a non-English main language had higher levels of inaction and were less likely to seek advice when they took action.
- Only three per cent of legal problems were finalised via formal proceedings in a court or tribunal and a further three per cent via formal dispute resolution or complaint handling processes. Thirty per cent of legal problems were finalised by agreement; 30 per cent of survey participants did not pursue the matter further; and in 15 per cent of cases the legal problem was resolved through the decisions or actions of government bodies, insurance companies or the police.
- Two-thirds of finalised legal problems had outcomes that were mostly or somewhat in the person’s favour. However, substantial legal problems and those involving crime or government problems were less likely to have favourable outcomes.

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82 Ibid, xviii.
83 Ibid, xix. Toy-Cronin also makes this point in Toy-Cronin, above n 18, 15.
84 Coumarelos et al, ibid, xix.
85 Ibid, xx.
Across Australia, the proportion of legal problems resulting in favourable outcomes was 68 per cent when advice was sought, 71 per cent when the problem was handled without advice, but only 58 per cent when no action was taken.86

The findings of the LAW Survey shed important light on the pathways Australians take to becoming an SRL, and the strategies that may assist them to resolve their legal problems. Self-help strategies may be of limited use when the person has poor legal capability and disadvantaged groups may benefit from information and education campaigns that help them understand when they have a legal problem and the legal services that are appropriate to that problem.87 The available legal services are often not well-known by the public and they need to be made more accessible.88 People often experience multiple problems that are both legal and non-legal that could be responded to more effectively in an integrated way.89 Further, low-cost quality legal services are required to assist the many people with legal problems who are disadvantaged.

The LAW Survey provides important information about the rate of legal problems in the community and how people deal with them (or not, as the case may be). It shows that only three per cent of legal problems will be resolved in courts and tribunals and a further three per cent of problems will be resolved in other formal dispute resolution procedures. Some of the people with these problems will be self-represented. The Productivity Commission highlighted that courts, tribunals, ombudsmen and other complaint bodies have varying degrees of formality, cost and timeliness.90 For many people, the cost will be prohibitive, but there will be other factors that act as barriers to access to justice, highlighted in the discussion above, including geographic location, economic capacity, health, education, language and communication difficulties and lack of awareness of the legal problem and how to resolve it.91 In particular, the Productivity Commission noted that people are often not aware that there are low cost and fast, informal pathways such as industry and government ombudsmen available to assist them.92 Where people do access legal services, they may find it hard to judge quality and whether services make them better off.

In terms of accessing legal aid to address unmet legal need, the Productivity Commission has highlighted that due to means-testing, only eight per cent of people would be able to access legal aid, and yet fourteen per cent of people are estimated to live below the poverty line.93 While many people might be able to afford the cost of resolving short term and simple legal problems, ongoing legal matters are likely to stretch the resources of those earning low and middle incomes.94 The people who do not qualify for legal aid and who cannot afford legal representation have been referred to as the ‘missing middle’ — that is, they do not meet the income means tests for legal aid and cannot afford legal representation.95

Specific problems and community groups are more likely to be associated with unmet legal need. The VAJR highlighted that people experiencing family violence have high levels of legal problems and reiterated the findings by the Royal Commission into Family Violence that

86 Ibid, xx.
87 Ibid, xxii.
88 Ibid, xxiii.
89 Ibid, xxiii.
90 Productivity Commission, above n 31, 6.
91 Ibid, 6.
92 Ibid, 11.
94 Victorian Government Department of Justice and Regulation, above n 65, 71.
95 Productivity Commission, above n 31, 20-24. See also Hunter, Giddings and Chrzanowski, above n 36.
people experiencing family violence may have unmet needs for legal assistance.96 Other groups particularly vulnerable to unmet legal needs include people from culturally and linguistically diverse backgrounds, Koori people, people with disabilities, older people, young people, LGBTI community members, people experiencing homelessness or insecure housing, people living in rural areas.97

The recommendations from the VAJR to facilitate improved access to justice and address unmet legal need included that:

- it is necessary to build capacity for people to better understand legal issues and how to get help to resolve those issues by providing free, easily accessible legal information (that is, information about the law, the justice system, common legal problems, legal assistance services and mechanisms for resolving disputes) and raising awareness of the role of the law;98
- access to legal information and legal assistance services be available from a well-recognised primary entry point99 but that multiple and local entry points are maintained;100
- there should be a focus on diverting people from civil litigation towards more appropriate resources or services than courts or tribunals to resolve their legal issues;101
- there be emphasis on using triage models and integrated services that holistically assess a person’s legal and non-legal problems and intervene as early as possible;102
- legal assistance services, such as legal aid, are important to help vulnerable and disadvantaged people get access to justice and that additional resources are required to address the gaps between the legal needs of this group and existing services;103 and
- clarity should be provided in the legal profession Conduct Rules regarding the unbundling of pro bono legal services. Pro-bono legal services play an important role in providing assistance to people who are not eligible for legal aid and an important means of providing unbundled legal services to SRLs.104

Access to quality legal information may be used to help a person to resolve their legal problems independently, and enable non-legal community workers to assist individuals to get help.105 Legal information and education form the bottom tier of a pyramid of graduated service provision with then progresses to assisted legal information, legal advice, dispute resolution assistance, legal representation and courts and tribunals.106 However, there are understandably many barriers that might prevent people from accessing legal information and legal assistance including low levels of literacy, cognitive difficulties, lack of access to a computer or the internet, lack of computer literacy, lack of confidence, fear for personal safety, and distrust of the system, to name a few.107

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97 Ibid, 90.
98 Ibid, 90.
99 The Review suggested that in Victoria this primary entry point should be Victoria Legal Aid rather than the Victorian Law Foundation: Victorian Government Department of Justice and Regulation, above n 65, 92.
100 Ibid, 90.
101 Ibid, 90.
102 Ibid, 150.
104 Ibid, 453.
105 Ibid, 94.
106 Ibid, 121.
As will be discussed further below, cost is a major reason why people take no action in relation to their legal problems and a key reason why people are self-represented. The next section of the report synthesises key findings from the recent literature about SRLs, including the specific recommendations made about these litigants.

2.3 Synthesising the findings of key research

The impact and experience of SRLs in civil justice systems have been an area of research and policy interest in Australia and internationally for many years. This section draws together the key findings, primarily focussing on the literature arising since 2012.

2.3.1 Recommendations from government reviews

Both the Productivity Commission and the VAJR recommended that the civil justice system do more to accommodate SRLs. The Productivity Commission noted that:

While courts and tribunals have already made efforts to simplify forms and procedures and provide information to support self-representation, there is still scope to improve outcomes. Equipping judges and court staff through training and clearer rules and guidelines is essential to give them the confidence to assist self-represented litigants while meeting their obligations of impartiality...

A broader range of advice and representation options should be supported, such as unbundled legal services and allowing self-represented litigants to rely on assistance from non-lawyers with appropriate protections in place. Where self-represented litigants fall into the gap between legal aid and private options, there is a role for duty lawyers and self-representation services. While these services can help to resolve disputes more efficiently and divert inappropriate matters away from courts and tribunals, the effectiveness of these services should be evaluated.108

The Productivity Commission made the following recommendations specific to SRLs, though many other recommendations to address access to justice, such as unbundling legal services and legal assistance services, will also benefit SRLs:

RECOMMENDATION 14.1
To assist litigants, including the self-represented, to clearly understand how to bring their case, courts and tribunals should take action to:

- draft all court and tribunal forms in plain language
- ensure that court and tribunal staff assist self-represented litigants to understand all time critical events in their case, and examine the potential benefits of technologies such as personalised computer generated timelines
- assess whether their case management practices could be modified to make self-representation easier, and implement changes where cost effective to do so.

RECOMMENDATION 14.2
The Australian, State and Territory Governments, courts, tribunals and the legal profession should:

- work together to develop clear guidelines for judges, court staff and lawyers on how to assist self-represented litigants within the courts and tribunals of each jurisdiction
- introduce mechanisms to enable sharing of lessons from each jurisdiction on an ongoing basis
- consider introducing qualified immunity for court staff so that they can assist self-represented litigants with greater confidence and certainty.

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108 Productivity Commission, above n 31, 17.
The guidelines should be explicit, applied consistently across courts and tribunals, updated whenever there are changes to civil procedures that affect self-represented litigants and form part of the professional training of court and judicial officers.

RECOMMENDATION 14.3
Australian, State and Territory Governments, courts, tribunals and the legal profession in each jurisdiction should:

- work together to facilitate the use of McKenzie friends to assist self-represented litigants, including through developing and implementing guidelines for courts and tribunals and a code of conduct for McKenzie friends
- develop and implement guidelines on other forms of non-lawyer assistance in courts and tribunals, where they are not already available.

RECOMMENDATION 14.4
Australian, State and Territory Governments should continue to facilitate and fund duty lawyers and self-representation services. An evaluation of both services should be conducted, particularly regarding outcomes for clients. A pilot to determine the scope for a co-contribution charge for self-representation services would be beneficial.109

The Productivity Commission also made a separate recommendation to enable SRLs to recover legal costs.110

In Victoria, the Victorian Government Access to Justice Review made a series of recommendations about enhancing the approach of Victorian courts and tribunals to SRLs, each of which has been endorsed by the Victorian Government, including:

Recommendation 8.1: Improving the way the courts work with self-represented litigants

- The courts and the Victorian Civil and Administrative Tribunal consider establishing a regular consultative forum on self-represented litigants that would allow the jurisdictions to co-ordinate their approaches to self-represented litigants, and share ideas and information.
- The courts and the Victorian Civil and Administrative Tribunal consider their strategies for:
  - education of judicial and quasi-judicial officers;
  - training of staff;
  - active case management of self-represented litigants;
  - access to mediation for self-represented litigants;
  - appropriate use of technology to assist self-represented litigants;
  - appropriate use of interpreters and spaces that are friendlier for culturally and linguistically diverse litigants; better use of ‘support people’ to assist self-represented litigants; and
  - reviewing forms and information to make them more accessible for self-represented litigants.

Recommendation 8.3 Giving separate recognition to the role of support persons at VCAT

- The Victorian Government should seek amendments to section 63 of the Victorian Civil and Administrative Tribunal Act 1998 (Vic) to more explicitly acknowledge the role of support persons, as a role distinct from that of an interpreter or an advocate. For example, acting under such a provision, a judicial officer could allow a Koori Elder to sit at the bar table with a Koori person who is a party to the proceeding. Similar clarifying provisions should be considered for each Victorian court.

109 Ibid, 56-57.
110 Ibid, Recommendation 13.5.
Recommendation 8.4 Self Representation Service

- The Victorian Government should work with the Supreme, County and Children’s Courts, the Victorian Civil and Administrative Tribunal, and the community legal sector to establish a Self Representation Service, to be administered by a not-for-profit organisation. The model could be adapted for use in the different jurisdictions.

2.3.2 Major academic research on SRLs since 2012

There have been several landmark studies of SRLs since 2012. These studies have provided much-needed insight into the experiences of SRLs and other legal actors dealing with SRLs, highlighting the challenges of facilitating access to justice for this group.

Macfarlane’s 2013 study examined the experiences of 259 SRLs and 107 service providers (court staff, duty counsel, pro bono lawyers, and community agency staff) in 3 Canadian provinces. The impetus for the study was concern that SRL policy was being made in the absence of empirical information about these litigants and the programs or services that they found valuable. The study is part of the ongoing Canadian National Self-Representing Litigant Project (‘NSRLP’). It used interviews and focus groups to explore the motivations and expectations of SRLs, their engagement with the justice system, online resources, legal information and other support and resources available to SRLs, interactions with lawyers and judges, and the social impact and consequences of self-representing. Macfarlane’s research highlights that many SRLs have devastating experiences, which undermine public confidence in the justice system. Updated data from the NSRLP on SRLs has found similar patterns to the original study.

In the United Kingdom, Trinder and colleagues conducted a qualitative study (involving observation, case file analysis, interviews and focus groups with key stakeholders) of SRLs in private family law proceedings prior to the legal aid cuts under the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 (UK). This reform effectively removed the ability of most litigants in family law cases to access legal aid after April 2013. The purpose of the 2014 study was to inform post-reform policy and practice relating to SRLs by developing an understanding of their involvement in private family law cases, behavioural drivers, support needs and interactions with the system. The research found that 50 per cent of cases had one SRL; in 25 per cent both parties were unrepresented; and in 25 per cent of cases the parties were both legally represented. Trinder and colleagues categorised SRL hearings into eight typologies, with SRLs who were ‘calm, settlement oriented, confident and prepared’ making hearings more workable, but those who were ‘volatile, litigious, over-confident, overwhelmed or poorly prepared’ making hearings less workable. Other interactional factors included ‘the style of the judge, the approach of opposing counsel and the...
The impact of the introduction of LASPO has been the subject of extensive analysis by Trinder and others since 2012. The Law Society of England and Wales have argued that LASPO has had a significant negative impact, undermining access to justice and leading to a dramatic increase in SRLs. The Law Society found that legal aid is no longer available to those who need it; for those who are eligible for legal aid it is hard to access; there are unaddressed service provision gaps; and the legislation has had a wider detrimental impact on the State and society. The Law Society also highlighted the importance of early legal advice in improving access to justice and to help stop a problem becoming a dispute. The UK Government is currently undertaking a review of the changes to legal aid brought in by LASPO.

Using a mixed methods approach, Weybury examined data from the County Court of Victoria and the High Court of Australia and used interviews to expand understanding of the impact of SRLs on judges. Weybury interviewed 20 judges from the County and Supreme Courts of Victoria and the Federal Court of Australia regarding their experiences of and attitudes toward SRLs. She considered a range of responses to SRLs such as providing representation, educating SRLs so that they can help themselves, and changing the system. Weybury ultimately recommended a single gateway, early advice, triage and referral model for SRLs.

In contrast, Toy-Cronin’s study of SRLs in New Zealand used a phenomenological study design, similar to a legal ethnography, to understand self-representation from the participant’s point of view. This study provided valuable qualitative data on how SRLs experience the justice system, which has previously been missing. The focus of the study was on SRLs who take an active role in proceedings and cases where only one party was an SRL. Toy-Cronin conducted 10 case studies, reviewed court documents, and interviewed 35 SRLs, 14 judges, 18 lawyers and eight court staff. Significantly Toy-Cronin argued that it is useful to conceptualise SRLs with respect to their interactions with the legal system and other participants, rather than looking at who SRLs are in isolation. She notes:

If LiPs are examined in isolation there is a risk of placing too great an emphasis on the personal strengths or supposed failings of individuals, focussing too much on their education, literacy, ability to interact with bureaucracy, their character, and ability to comprehend and marshal the assistance given them. By looking at all the participants in the court process and using multiple methods of qualitative inquiry, the emphasis can instead be placed on systemic explanations for the interactions LiPs have with the court system, related to the structure of legal services, the aims of the civil justice system, and courtroom organisation.

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121 Trinder et al, above n 116 68; also cited in Toy-Cronin, above n 18, 18.
124 Ibid.
125 Ibid.
128 Ibid.
129 Toy-Cronin, above n 18.
130 Richardson, Sourdin and Wallace, above n 3.
131 Toy-Cronin, above n 18.
132 Toy-Cronin, above n 18, 2. Richardson, Sourdin and Wallace discussed the typologies that Toy-Cronin refers to in the first half of this quote in Richardson, Sourdin and Wallace, above n 2, 11-12.
As Toy-Cronin discusses, Trinder and colleagues’ study indicates that there does not appear to be a link between the characteristics of the SRL (such as being educated and professional) and their ability to handle their legal matter effectively. Toy-Cronin adopted categorisations relating to the experiences and behaviour of SRLs: the vanquished; the procedurally challenged; serial appellants; and added Trinder’s category of the legally challenged. Toy-Cronin also noted that there is a sub-category of SRLs in the literature described as querulous, vexatious, difficult, persistent and obsessive. Toy-Cronin reviewed the literature on this particular group and highlighted that they represent a very small percentage of SRLs. She referred to these SRLs in her study as ‘unusually persistent litigants.’

2.4 Addressing the key questions about SRLs

Drawing together the findings of the research outlined above, the next part of the report synthesises the evidence base on key recurring questions about SRLs’ impacts upon and experiences of civil and administrative justice.

2.4.1 What do we know about SRLs’ experiences of self-representation?

Who are SRLs?

SRLs have a diverse range of characteristics and experiences of the legal system. Information about the characteristics of SRLs is patchy but earlier studies found that SRLs were more likely to be male, unemployed and/or have low income. More recent demographic research indicates similar patterns, though each jurisdiction is different. Users of the LawRight service in Queensland (formerly QPILCH), for example, tended to be older, male, with low incomes and experiencing barriers to access to justice due to disability, coming from a non-English speaking background, having limited internet access and impaired legal capacity.

Why do SRLs self-represent?

Recent reports and research indicate that the reasons for self-representation are similar to those discussed in the literature canvassed by Richardson, Sourdin and Wallace in 2012. The Productivity Commission reported that most SRLs are self-represented involuntarily because they cannot afford legal representation, though some choose to self-represent because they feel constrained by their circumstances. There may be a link between legal aid funding and self-representation but there is limited data to support that contention in

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133 Trinder et al, above n 116.
134 Toy-Cronin, above n 18.
135 Ibid, 18.
136 Ibid, 18.
137 Ibid, 19.
138 Ibid, 18.
139 Productivity Commission, above n 31, 489.
142 Richardson, Sourdin and Wallace, above n 2.
143 Productivity Commission, above n 31, 487; Victorian Government Department of Justice and Regulation, above n 103, 472.
Australia.\textsuperscript{144} However, in the United Kingdom, the influence of cuts to legal aid has reportedly led to substantial increases in numbers of SRLs in family matters recently.\textsuperscript{145}

User surveys by LawRight in Queensland indicate that SRLs self-represent due to the following factors, with more common reasons listed first:

- Costs of representation
- Could not obtain legal aid
- Could handle the case themselves
- Did not trust lawyers to represent them
- Did not want to pay a lawyer
- Felt lawyer not able to represent in best way
- Had sacked their lawyers
- No lawyer willing to act
- Time pressures
- Bad previous experience with lawyers.\textsuperscript{146}

As part of the VAJR, the Victorian Government conducted a survey of self-represented litigants and received 57 responses.\textsuperscript{147} In terms of reasons for self-representing, while not being able to afford a lawyer accounted for around half of all respondents, other reasons included not qualifying for legal aid, a belief that they could best represent their interests, that they did not see the need for a lawyer, they were appearing in a tribunal and a lawyer was not required, and they did not want a lawyer.\textsuperscript{148} As with other studies, most SRLs had sought assistance from sources including community legal centres, court registry staff, private law firms, and legal aid, which was reportedly ‘helpful’ or ‘very helpful’.\textsuperscript{149} Most had conducted legal research.\textsuperscript{150} In terms of what services and assistance they would have liked, SRLs said they would have liked strategic advice, legal advice, assistance with court procedures, assistance with court documents, general advice and other advice.\textsuperscript{151}

International research from Canada, New Zealand and the UK confirms many of these factors,\textsuperscript{152} particularly that the inability to afford legal representation is the most common reason for self-representation. But rarely is it the sole reason for being self-represented. Toy-Cronin described SRLs’ explanatory narratives as containing ‘multiple and overlapping reasons.’\textsuperscript{153} In Toy-Cronin’s study, the rationales offered by SRLs were grouped into four categories, and these are reflected in the other recent research:

- **Problems accessing legal services** due to their cost, ineligibility for legal aid, the expense of returning to legal representation after litigating in person for a time;
- **The quality of the services accessed** including second-rate service and errors, lack of expertise of lawyers who often do legal aid work, negative experiences with counsel (such as

\textsuperscript{144} Richardson, Sourdin and Wallace, above n 2; Productivity Commission, above n 31, 493.
\textsuperscript{146} Productivity Commission, above n 31, 491.
\textsuperscript{147} Victorian Government Department of Justice and Regulation, above n 103, 474.
\textsuperscript{148} Ibid.
\textsuperscript{149} Ibid.
\textsuperscript{150} Ibid.
\textsuperscript{151} Ibid.
\textsuperscript{152} Macfarlane, above n 111; Toy-Cronin, above n 18; Trinder et al, above n 116.
\textsuperscript{153} Bridgette Toy-Cronin, ‘1 Ain’t No Fool: Deciding to Litigate in Person in the Civil Courts’ [2016] 4 *New Zealand Law Review* 723, 742.
bullying or a lack of understanding or belief in the litigant’s story), fragility of the lawyer-client relationship;

- **Beliefs about how cases are determined and the lawyer’s role in that process** including beliefs that a lawyer might bring minimal advantage, that they are simply bureaucrats within the court system, that the SRL has sufficient experience to manage their own case, that others had encouraged the SRL to do it himself or herself, that the lawyers were getting nowhere and the SRL might as well do it themselves, that the judge, court staff and opposing lawyer were obliged to help them and make special allowances for them; that the truth would come out and the courts would deliver justice; and

- **Institutional encouragement to litigate in person.**154

SRLs often thought they had a better understanding of the facts of their case than a lawyer would and that a lawyer would not be able to understand or remember all the details. Some also believed that there was dignity in representing themselves or a benefit in being free from the rules and cultural restraints that lawyers are required to comply with and that they would be more forceful advocates than a lawyer.155

Toy-Cronin’s research highlighted that the nuanced factors and complexities that influence decisions to self-represent are not well understood by judges and the legal profession.156 As the above bullet points indicate, the decisions of many SRLs to self-represent are influenced by the ‘perceived quality of legal services they could or did access, and their lay understanding of the function of lawyers and the legal system’ but this is ‘largely at odds with the perceptions of the bench and bar’.157 The inability to secure legal services was seen by judges and lawyers as the major driver behind self-representation, though some lawyers held the view that some SRLs could afford a lawyer but did not want to spend the money.158 Some judges also noted that there was a group of SRLs who thought they could do as good or better job as a lawyer and that they were unwilling to accept the advice of lawyers that their case was unarguable.159

Toy-Cronin suggested that many of the reasons SRLs gave for litigating in person would likely be interpreted by judges and lawyers as indicating that the SRL was unreasonable and obsessed.160 Further, the more experienced the litigant is, the more likely judges are to perceive the SRL as unreasonable, particularly if they had a lawyer or multiple lawyers previously.161

Importantly, Toy-Cronin argues that the decisions of SRLs to litigate in person are often in response to the messages communicated by the justice system about the openness of the courts.162 She suggests that:

> One way of framing the LiPs’ reasons for coming to court in person is that the courts are effectively communicating their openness to them, a posture that is necessary to maintain the courts’ legitimacy. However, at the same time, there is a failure to convince people that their access needs to be mediated by a lawyer, when that is probably necessary for the efficiency and effectiveness of the system. Moreover, the failure to convince people that they need a lawyer can be seen in terms of a failure of the legal profession to produce a commodity (legal services) that people believe is valuable, that they can afford, and that they believe they cannot produce themselves.163

154 Ibid; Toy-Cronin, above n 18; see also Trinder et al, above n 116, for similar reasons.
155 Toy-Cronin, above n 18, 98-100.
156 Ibid.
157 Ibid, 86.
158 Ibid.
159 Ibid.
160 Ibid.
161 Ibid.
162 Ibid, 86.
Mather and Moorhead and Sefton have made similar arguments about the projected openness of the court. SRLs take the promise of openness and accessibility of the court at face value but at the same time ignore the limits of their competence. That is, the right to access courts in person creates an expectation that this is in fact possible. This is further encouraged by the availability of information online and exacerbated by a lack of understanding of how the legal system works, how long things take and the work involved.

The impression that the courts are open and accessible changes once the SRL arrives at the court door and begins to interact with court staff, lawyers and the judiciary. The consistent message is then one of the importance of having legal representation and the constant encouragement to SRLs that they get legal advice. But the problem that SRLs face is that there is, very often, little free or low cost advice available. This is worse in some jurisdictions than others. In New Zealand, Toy-Cronin notes, that there are ‘very limited alternatives to full, privately paid representation.’ Judges and lawyers believe that many SRLs are self-represented because they cannot access legal aid, yet they continue to suggest that SRLs engage lawyers, indicating a lack of knowledge among the judiciary about the resources that are actually available to litigants. The persistent encouragement may stem from a concern about the extra work that a SRL creates and desire to minimise that strain, or the judge may be seeking to gain some moral distance from the problems that SRLs face in coming to court. Yet, while there exists a perception that SRLs are more likely to bring unmeritorious claims, the study by Trinder et al of private family law cases found SRLs were no more likely to bring unmeritorious or serial applications than represented litigants.

Many SRLs will seek to access legal advice during the proceedings. In Macfarlane’s study, this was 86 per cent of SRLs, consisting of SRLs who sought paid legal advice (53 per cent) and those who sought pro bono assistance (33 per cent). For the remaining 14 per cent that did not seek legal advice, cost was the barrier cited. In Toy-Cronin’s study, 29 of the 35 SRLs had initially engaged a lawyer or attempted to do so. Both Macfarlane and Toy-Cronin found that it was common for SRLs to commence their legal action or involvement in a legal action with legal representation or to have legal representation at some point in the legal proceedings. In Trinder and colleagues’ study about half of family law SRLs had had legal representation or advice at some point in the case. Trinder and colleagues also noticed three main patterns, in order of frequency:

1. beginning with a lawyer and becoming unrepresented;
2. assistance from a solicitor out of court but self-representation in court; and

164 Moorhead and Sefton, above n 40.
166 Toy-Cronin, above n 18, 109.
167 Ibid.
168 Ibid.
169 Ibid, 152.
170 Ibid, 152.
171 Ibid.
172 Ibid.
173 Trinder et al, above n 116.
174 Macfarlane, above n 111, 82.
175 Ibid, 82.
176 Toy-Cronin, above n 18.
177 Macfarlane, above n 116; Toy-Cronin, above n 18.
178 Trinder et al, above n 116.
(3) beginning in person but becoming represented.\textsuperscript{179}

In their study around one quarter were SRLs because they had chosen to be self-represented.\textsuperscript{180}

Toy-Cronin highlights that the timing and circumstances where cost becomes the primary reason for self-representation is different for each SRL.\textsuperscript{181} Some may have never been able to afford representation, some may have had legal aid initially but funding ran out. For others, changes in their financial circumstances meant they were no longer eligible for legal aid but they could not afford a private lawyer. Some started out with a private lawyer but could not afford to continue paying for legal representation.\textsuperscript{182} Macfarlane made similar findings, noting that representation was also influenced by litigants’ perceptions of what was ‘affordable’ and a mismatch between litigants’ ideas and the contemporary costs of private legal services.\textsuperscript{183}

In Macfarlane’s study, litigants subsequently became self-represented because they were dissatisfied with their counsel, reporting their counsel was “doing nothing”… not interested in settling the case; [they had] difficulty finding counsel to take their case; [was] not listening or explaining;…made mistakes/was not competent.”\textsuperscript{184} Sometimes SRLs were represented initially but exhausted their funds before resolution and felt they had no choice but to continue on self-represented.\textsuperscript{185} SRLs were often frustrated that the actual fees outstripped the fee indications initially provided by their lawyers,\textsuperscript{186} and perceived that the services of lawyers did not represent value for money.\textsuperscript{187} This was particularly the case when the cost of legal fees was disproportionate to the size of the claim.

Regardless of the circumstances behind self-representing, most SRLs reported that they did not believe that they could do a better job without a lawyer or felt confident they could cope alone; rather, many were scared and overwhelmed by the prospect but felt they had no choice.\textsuperscript{188} Most SRLs would have preferred to have legal representation. Only one fifth of SRLs in Macfarlane’s study expressed a preference for representing themselves, even though they also gave financial constraints as a reason for self-representing.\textsuperscript{189} This preference was more common if the person had prior experience handling a legal matter successfully.\textsuperscript{190} However, there was a tension between the importance of staying in control of their case and coping with the stress and anxiety that the SRL often felt throughout the legal proceedings.\textsuperscript{191} Research from Genn and Beinart\textsuperscript{192} and Mather\textsuperscript{193} indicates that another common reason for self-representing is the perception that the case is simple enough to handle themselves.\textsuperscript{194}

The notion of access to justice can be quite seductive for some SRLs but often the ‘fairy tale’ does not match the reality.\textsuperscript{195} Even when SRLs have confidence that they can represent

\textsuperscript{179} Though the authors noted that these patterns were to be treated with caution because of the design of the study: Trinder et al, ibid, 22.
\textsuperscript{180} Ibid.
\textsuperscript{181} Macfarlane, above n 111.
\textsuperscript{182} Ibid.
\textsuperscript{183} Ibid, 40.
\textsuperscript{184} Ibid, 8.
\textsuperscript{185} Ibid; Toy-Cronin, above n 18.
\textsuperscript{186} Toy-Cronin, above n 18.
\textsuperscript{187} Macfarlane, above n 111, 10.
\textsuperscript{188} Ibid.
\textsuperscript{189} Ibid.
\textsuperscript{190} Ibid.
\textsuperscript{191} Ibid.
\textsuperscript{193} Mather, above n 165, 149.
\textsuperscript{194} Toy-Cronin, above n 18.
\textsuperscript{195} Macfarlane, above n 111, 51.
themselves, many become disillusioned, frustrated and overwhelmed by the complexity of the case and time-consuming nature of representing themselves.\textsuperscript{196} Those SRLs who have a university education may be more inclined to think that they will be able to navigate the justice system, but they too can find the system difficult to understand and far more challenging than they expected.\textsuperscript{197}

For those SRLs who do change their mind about representing themselves and seek to appoint a legal representative part way through a matter, they find that the costs quoted by the lawyer to bring themselves up to speed with the case can be prohibitive.\textsuperscript{198} Further, SRLs who try to engage lawyers for certain stages or tasks or aspects of the case (i.e. to access unbundled services) often struggle to do so.\textsuperscript{199} The traditional legal services model is often the only model presented to SRLs and the cost of these services is beyond the financial reach of many people and not of interest to those SRLs who want to retain some control over the progression of their case.\textsuperscript{200}

\textbf{What is the experience of self-representing like?}

Richardson, Sourdin and Wallace noted in 2012 that there had been a cultural shift, evident in court publications, towards recognising SRLs as a ‘legitimate client group that courts need to accommodate.’\textsuperscript{201} Some SRLs will require access to court-based support services, such as Court Network, Salvation Army, Legal Aid, community legal centres, housing and drug and alcohol referral services.\textsuperscript{202} In Victoria, at the County Court and the Supreme Court, SRL Coordinators within the court registry are available to assist SRLs with procedural advice and make referrals to legal assistance providers.\textsuperscript{203} These services will be discussed further in Part 3 of this Report.

Despite the accommodations that have been made for SRLs by courts and tribunals, being an SRL can be extremely challenging,\textsuperscript{204} particularly when the SRL is vulnerable in some way.\textsuperscript{205} For example, SRLs in family violence matters may experience threats to their safety and associated stress and anxiety,\textsuperscript{206} which can be exacerbated by the experience of self-representing.\textsuperscript{207} The legal process and the language used by lawyers, judges and court staff can be very confusing and may not be explained to the SRL.\textsuperscript{208} SRLs often have difficulty understanding procedural requirements, rules of evidence and the cause of action. They may also have difficulty conducting cross-examination and asking appropriate questions of witnesses, identifying the relevant legal issues in the case, engaging experts to give evidence

\begin{itemize}
\item \textsuperscript{196} Ibid.
\item \textsuperscript{197} Ibid, 10. An account of this is given by SRL Derek in this NSRLP video: https://representingyourselfcanada.com/our-videos/
\item \textsuperscript{198} Ibid, 10.
\item \textsuperscript{199} Ibid, 10.
\item \textsuperscript{200} Ibid; Melissa Smith, Esther Banbury and Su-Wuen Ong, \textit{Self-Represented Litigants: An Exploratory Study of Litigants in Person in the New Zealand Criminal Summary and Family Jurisdictions} (Ministry of Justice of New Zealand, 2009).
\item \textsuperscript{201} Richardson, Sourdin and Wallace, above n 2, 14; Victorian Government Department of Justice and Regulation, above n 103.
\item \textsuperscript{202} Ibid, 478.
\item \textsuperscript{203} Ibid, 479.
\item \textsuperscript{204} Moorhead and Sefton, above n 40; Victorian Government Department of Justice and Regulation, above n 103, 484; Productivity Commission, above n 31, 494-495.
\item \textsuperscript{205} Trinder et al, above n 116. Trinder et al refer to Moorhead and Sefton’s 11 indicators of vulnerability as being a victim of violence; depression; alcoholism; being a young lone parent; drug use; history of imprisonment; mental illness; living in temporary accommodation with children; illiteracy; terminal illness; and involvement with social services: 26.
\item \textsuperscript{206} Victorian Government Department of Justice and Regulation, above n 103, 477.
\item \textsuperscript{207} Smith, Banbury and Ong, above n 200.
\item \textsuperscript{208} Moorhead and Sefton, above n 40, 484.
\end{itemize}
and interpreters and working with opposing counsel. These issues tend to arise more in matters heard in the higher courts.

SRLs often have no idea what to expect and any expectations are often inaccurate. Macfarlane noted that there were four stages/tasks that overwhelmed SRLs: commencing proceedings and filing paperwork; discovery; participating in hearings; and the post-trial phase, particularly enforcement or orders obtained.

The recent studies indicate that the areas SRLs consistently have difficulties with include:

- The lack of legal knowledge and understanding of court language, processes and protocols.
- Completing court forms. Even online forms can be complex and difficult to complete without assistance. It is often difficult for SRLs (and sometimes legal professionals) to know which forms to complete, to understand the language used in the form, and the consequences of not completing forms correctly.
- Using online resources (including forms, legal information websites, videos), even where these have been created for SRLs. The reading level, use of jargon and unexplained legal terms can make online resources difficult to understand. The key problems SRLs have identified with online resources include their emphasis on substantive legal information and an absence of guidance on practical tasks like filing or serving, negotiating or communicating with the other side; being directed to other sites (sometimes with broken links) with inconsistent information; and the multiplicity of sites available without the means to differentiate which is the most ‘legitimate’.
- The quality and range of legal information services available to SRLs is often insufficient to meet their needs; face-to-face legal information services based in courts are seen by SRLs as their most helpful resource.
- Understanding the distinction between legal information and legal advice.
- Applying advice received from a lawyer in the court setting.
- Managing evidence, including briefing and cross-examining witnesses, using experts, and understanding why some evidence has been excluded by the judge (such as hearsay evidence).
- Role conflict acting both as a witness and advocate.
- The lack of understanding that the judgment was not the end of the matter, but the beginning of arguments about costs, enforcement and appeals (and sometimes complaints).
- Understanding costs, for example that they may avoid the cost of legal representation but are not immune from liability for cost orders (a particular risk when they have taken unnecessary steps in the proceeding). Additionally, when the SRL is successful there is generally no right to recover costs beyond out of pocket expenses.

Toy-Cronin found that most SRLs had difficulties producing court documents to the technical and professional standard required by the court, though the quality ranged from

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209 Productivity Commission, above n 31, 494-495.
210 Macfarlane above n 111.
211 Ibid 54.
212 Smith, Banbury and Ong, above n 200, 71; Trinder et al, above n 116; Toy-Cronin, above n 18, 185.
213 Macfarlane, above n 111.
214 Ibid.
215 Ibid, 10.
216 Ibid.
217 Ibid.
218 Toy-Cronin, above n 18, 186.
220 Ibid, 198.
221 Ibid, 214.
222 Ibid, 216.
incomprehensible and illegible documents to well-prepared documents.223 Some SRLs did not inform themselves of the procedural conventions or conform to them.224 According to judges and lawyers, understanding documents filed by SRLs was often difficult because of the mixed or incorrect content in statements of claim, legal submissions and evidence.225 While this would invariably be frustrating and time consuming for judges and lawyers, many took the approach of accepting the documents as written, as long as the case could be understood, in order to deal with the proceeding efficiently and speedily.226 Understanding the legal relevance of aspects of the case and separating this from their emotional involvement in the case is also difficult for some SRLs.227

The frustrations that SRLs may experience in interacting with the court system can be directed toward court and tribunal staff, the judiciary and tribunal members.228 SRLs report varying experiences with judges, with some assist the SRL by providing ‘advice regarding court procedure, coaching on presentation, and progress towards settlement’; other SRLs perceived they had been treated with rudeness and incivility by judges.229 Most SRLs also report feeling anxious about speaking for themselves in front of judges.230 These feelings stem from:

- feeling like an outsider to the legal process and court procedure;
- not knowing how to behave in court;
- being emotionally and personally invested in the case;
- the difficulty of appearing before multiple judges;
- appearing before a judge who did not appear to have read the materials;
- feeling that they were being prejudged by the judge;
- feeling like they were not being taken seriously by the judge and were second-class to the lawyer;
- experiencing hostility; and
- experiencing moral judgment (primarily about ‘choosing’ not retaining counsel).231

Some SRLs feel that the complexity of legal processes is deliberately designed to shut them out of the legal system.232 Macfarlane’s study demonstrated that there are a number of negative consequences for SRLs through representing themselves, including:

...depletion of personal funds and savings for other purposes; instability or loss of employment cause by the amount of time required to manage their legal case; social and emotional isolation from friends and family as the case becomes increasingly complex and overwhelming; and a myriad of health issues both physical and emotionally.233

These negative consequences and the experience of self-representing often results in a loss of faith in the justice system,234 with many SRLs having criticisms and making complaints.235 There was, for many, a large gap between their expectations and the reality of the judicial process, which led to feelings of frustration.236 Persistent litigants were more likely to not
accept the finality of decisions handed down and to criticise the integrity of the judge and court staff.\textsuperscript{237}

However, research by Robertson and Giddings highlights that it should not be assumed that SRLs will always have a negative experience: the experiences of SRLs (and outcomes) can be driven very much by their personal attributes.\textsuperscript{238} In a study of SRLs in a tenancy tribunal in Queensland, Robertson and Giddings found that the SRLs who were more effective and successful were those who ‘displayed positive attitudes, motivation and self-belief, and also exhibited certain abilities, such as organisation, research and preparation’.\textsuperscript{239} Those SRLs who were more negatively disposed towards representing themselves and their legal problem, or lacked confidence and did not seek advice or prepare or research thoroughly, were less likely to deal well with their matter.\textsuperscript{240} Robertson and Giddings categorised these attributes as ‘engager’ and ‘avoider’ characteristics.\textsuperscript{241} Other factors that influenced a SRL’s experiences were those who had benefited from user support and information resources, and where the legal tasks were manageable ones.\textsuperscript{242} Their study draws on the concept of legal capability which ties in with considerations of legal need and has been canvassed recently by McDonald and People.\textsuperscript{243} McDonald and People state that ‘Legal capability has been defined as the personal characteristics or competencies necessary for an individual to resolve legal problems effectively. It generally comprises capabilities across a number of domains, including knowledge, skills, and psychological readiness to act.’\textsuperscript{244} A SRL’s legal capability therefore is likely to have a significant influence on their experiences of self-representation.

\textbf{SRLs and Family Violence Matters}

Concerns around SRLs are magnified in civil cases where family violence is at issue including in protection (intervention/apprehended violence) order applications, family law matters, child protection proceedings and in victims of crime compensation cases. In Victoria, the VAJR\textsuperscript{245} in 2016 revealed that there were many SRLs in family violence intervention order matters in the Magistrates’ Court and increases in SRLs in child protection matters at the Children’s Court of Victoria.

The \textit{National Domestic and Family Violence Bench Book} notes that victims of family violence who are SRLs face particular challenges:

Where a victim makes an application for a protection order (rather than the police on the victim’s behalf), and particularly in cases where the victim is self-represented, judicial officers should be aware of how the victim may be adversely impacted by the proceedings if, for example, they feel a responsibility to prosecute their own case, or if they feel at risk of further harm or abuse, or if they feel the abuse they’ve experienced is being denied or minimised or is somehow their fault.\textsuperscript{246}

\begin{thebibliography}{99}
\bibitem{Robertson229} Robertson, Michael and Jeff Giddings, ‘Self-Advocates in Civil Legal Disputes: How Personal and Other Factors Influence the Handling of Their Cases’ (2014) 38 \textit{Melbourne University Law Review} 119.
\bibitem{Robertson120} Robertson, Michael, ibid, 120.
\bibitem{Robertson120} Robertson, Michael, ibid, 120.
\bibitem{Robertson149} Robertson, Michael, ibid, 149-150.
\bibitem{Robertson243} McDonald and People, Hugh, \textit{Legal Capability and Inaction for Legal Problems: Knowledge, Stress and Cost} (Updating Justice No 41, Law and Justice Foundation of New South Wales, June 2014); Hugh McDonald and Zhigang Wei, \textit{How People Solve Legal Problems: Level of Disadvantage and Legal Capability}. (Justice Issues 23, Law and Justice Foundation of New South Wales, 2016).
\bibitem{Robertson244} McDonald and People, ibid, 2, citing Coumarelos et al, above n 62.
\bibitem{Robertson245} Victorian Government Department of Justice and Regulation, above n 103, 472-3.
\end{thebibliography}
The Royal Commission into Family Violence noted that where victims of family violence are
not legally represented, court processes can provide an opportunity for a violent partner to
continue to exercise power and control over the victim, thus continuing the abuse.247 In family
violence intervention order application proceedings, victims of family violence (who are usually
women) in rural and regional areas may not engage a lawyer because of lack of access to
legal assistance or because of the cost of engaging private lawyers.248

The impact of a self-represented perpetrator of family violence is a particular concern for
victims of family violence in protection applications of family law matters where the SRL is
permitted to cross-examine the alleged victim of the family violence.249

2.4.2 What do we know about the prevalence of SRLs?

Data challenges

There is a perception in Australian civil and administrative justice systems that the numbers
of SRLs are increasing. This perception does appear to be supported, to a limited extent, by
some court data and isolated studies.250 The persistent data challenges in the civil and
administrative justice systems make it very difficult to definitively determine whether there is
growth in self-representation, and if so, what the associated consequences might be. Additionally, as the Productivity Commission has noted, there is very limited information about
SRLs who resolve their disputes before or shortly after entering a court or tribunal.251 There is
more information about SRLs litigating before a court or tribunal but this data also has
limitations.252 As Richardson, Sourdin and Wallace found in 2012, courts and tribunals have
traditionally restricted the collection of data to issues relevant to their perceived operational
needs rather than collecting a broad range of data on SRLs.253 In New Zealand, there have
been similar problems with limited data on SRLs that has been collected in a piecemeal
fashion.254 Data about SRLs may be limited by issues of quality, reliability and access.255
Unreliable or inconsistent data collection may arise because of out-dated case management
systems256 and inconsistent data recording.257

There is some way to go to improve the collection of data in courts and tribunals regarding
numbers of SRLs and their characteristics. In their recent appraisal of civil justice data in NSW,
Mirrlees-Black, Forrell and Randell highlighted the challenges in assessing representation
data. They suggested that decisions need to be made about ‘whether it is during the claim

248 Amanda George and Bridget Harris, *Landscapes of Violence: Women Surviving Family Violence in Regional
and Rural Victoria* (Centre for Rural and Regional Law and Justice, 2014) 111-12.
249 Productivity Commission, above n 31, 501; Trinder et al, above n 116.
250 Richardson, Sourdin and Wallace, above n 2, 13-14; Hunter et al, above n 140. See also internationally,
Moorhead and Sefton, above n 40; Williams, above n 140; Smith, Banbury and Ong, above n 200; New Zealand
Law Commission, *Dispute Resolution in the Family Court Report 82* (Wellington, New Zealand, 2003); Maria
Barrett-Morris, Mike Aujla, and Hugh Landerkin, *The Self-Represented Litigant in the Courts: An Annotated
Bibliography* (Royal Roads University, 2004); M Stratton, *Alberta self-represented litigants mapping project final
report* (Edmonton, Alberta: Canadian Forum on Civil Justice, 2007); Canadian Forum on Civil Justice, above n 3.
251 Productivity Commission, above n 31, 488.
252 Ibid, 488.
253 Richardson, Sourdin and Wallace, above n 3.
254 Toy-Cronin, above n 18.
255 Richardson, Sourdin and Wallace, above n 3; Victorian Government Department of Justice and Regulation,
above n 65.
256 Victorian Government Department of Justice and Regulation, ibid, 66.
257 Richardson, Sourdin and Wallace, above n 3.
proceeding only or for any proceeding within the case; counted for each party, any party or the first name party only or at any point during the case or for specific events within a case.\textsuperscript{258}

**Apparent increases in SRL numbers**

Data limitations make it difficult to evaluate trends in the prevalence of SRLs across justice systems, with the perceived growth perhaps outstripping the reality.\textsuperscript{259} Nonetheless, data at the forum level does seem to suggest an increase in SRL numbers in some settings. In 2014, the Productivity Commission concluded from the state court data that, SRLs seemed to have increased slightly over time.\textsuperscript{260} In contrast, in the Federal Court, by 2011-2012 cases commenced by SRLs appeared to have decreased significantly, which was likely due to government funded legal assistance for asylum seekers.\textsuperscript{261} Weybury argues that increases in SRL numbers in courts probably occurred in the early 2000s and there has not been any dramatic increase over the past decade, despite what judges often say.\textsuperscript{262} Toy-Cronin notes that there have been similar claims in New Zealand about the rising numbers of SRLs but there is no data available to ascertain whether the perceptions are accurate.\textsuperscript{263} In contrast in North America where data has been collected, Macfarlane notes that there have been dramatic increases in SRLs in family and civil cases, with numbers consistently at or above 40 per cent in Canada and as high as 80 per cent in California in family cases and in the small claims court in British Columbia.\textsuperscript{264}

Context is very important in any discussion about SRLs.\textsuperscript{265} As noted in Part 1, SRLs are the norm for many tribunals and lower courts, which may explain the lack of perceived need for monitoring of SRL prevalence.\textsuperscript{266} However, in the higher courts, the complexity of disputes and procedure, and the questions of law often in issue, mean that increasing numbers of SRLs potentially poses more challenges for the courts and lawyers.\textsuperscript{267} In tribunals, higher numbers of SRLs are expected as these forums may be designed so that people can represent themselves. It has been estimated by VCAT, for example, that 80 per cent of cases involve at least one SRL.\textsuperscript{268} Courts at the lowest tier, such as Magistrates’ Courts or Local Courts, will also have higher levels of SRLs when compared to the higher courts.\textsuperscript{269} At the Magistrates’ Court of Victoria, there are large numbers of self-represented parties in family violence matters,\textsuperscript{270} and increases have been reported in child protection matters and contested hearings in the family division of the Children’s Court of Victoria.\textsuperscript{271}

**Jurisdiction snapshots**

Some annual reports from Australian courts report numbers of self-represented litigants. Richardson, Sourdin and Wallace\textsuperscript{272} provided a snapshot of SRL numbers in the federal jurisdiction as at 2012 and some state data. These figures have been updated and expanded in this report with the latest publicly-available web data. The data presented below represents

\begin{itemize}
  \item Catriona Mirrlees-Black, Suzie Forrell and Sarah Randell, *Data insights in civil justice: NSW District Court* (Law and Justice Foundation of New South Wales, June 2017), 53.
  \item Richardson, Sourdin and Wallace, above n 3, 13.
  \item Productivity Commission, above n 31, 488-489 and Appendix F Data on self-represented litigants.
  \item Ibid, 997.
  \item Weybury, above n 127.
  \item Toy-Cronin, above n 18.
  \item Macfarlane, above n 111, 15.
  \item Productivity Commission, above n 31, 498.
  \item Richardson, Sourdin and Wallace, above n 3; Ibid, 487.
  \item Productivity Commission, above n 31, 487.
  \item Victorian Government Department of Justice and Regulation, above n 103, 472.
  \item Ibid, 472, 473.
  \item Ibid, 472.
  \item Ibid, 473.
  \item Richardson, Sourdin and Wallace, above n 2.
\end{itemize}
an attempt to collate the existing published data from one-off studies, government reports and annual reports. However, it should be noted that even though we have some more literature sources to draw on, as was the case in 2012, it remains difficult to gain a clear and consistent picture of whether SRLs have increased in most jurisdictions because of varied and inconsistent data collection and reporting practices within and between jurisdictions. This is therefore a patchy picture and one that unfortunately does not give a clear answer to question about the prevalence of SRLs.

(a) High Court of Australia

Weybury reported that the raw number of SRLs in civil cases per year decreased from 462 (in 2005) to 242 (in 2012), but there was a spike of cases in 2007/2008 (572 cases).²⁷³ The spike was due to the number of special leave applications by asylum seekers.²⁷⁴ The majority of cases filed by SRLs are asylum seekers applying for judicial review of a decision to deny them a protection visa.²⁷⁵ Other common causes of action were practice and procedure, family, costs, bankruptcy and administrative law.²⁷⁶ In the years from 2008-2012, immigration cases declined while other civil cases increased slightly.²⁷⁷ Overall, numbers of SRLs in civil cases declined from 67 per cent in 2007-2008 to 39 per cent in 2011-2012, the majority of which were special leave applications.²⁷⁸ Other types of originating procedures filed by SRLs included applications for orders to show cause, applications for leave to issue, applications for removal and writ of summons.²⁷⁹ The majority of special leave applications are dealt with on the papers.²⁸⁰ The High Court does not record numbers of cases that are settled.

The High Court Annual Report contains data on SRLs in special leave applications, not the broader category of all civil cases. In 2015-2016, 46 per cent of special leave applications were filed by SRLs and 33 per cent of these cases were immigration matters. Seventy-six per cent of immigration applications in 2015-2016 involved SRLs.²⁸¹ The total number of special leave applications by SRLs remained steady at 42 per cent in 2016-2017.²⁸²

(b) Federal Court of Australia

In 1998, Gamble and Mohr reported that 17 per cent of parties in the Federal Court were self-represented.²⁸³ In 2010-2011, 336 self-represented parties commenced proceedings in the Federal Court, mainly in migration appeals.²⁸⁴ The top four causes of actions were appeals, administrative law matters, bankruptcy and corporations matters.²⁸⁵ In its 2016-2017 Annual Report, the Federal Court reports that 642 self-represented parties commenced proceedings.²⁸⁶ The majority of these were appellants in migration appeals.²⁸⁷ 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.

²⁷³ Weybury, above n 127, 26 Fig 2.1.
²⁷⁵ Ibid, 33.
²⁷⁶ Ibid, Fig 2.6.
²⁷⁷ Ibid, 27.
²⁷⁸ Ibid, 29.
²⁷⁹ Ibid, 32.
²⁸⁰ Ibid, Fig 2.7.
²⁸¹ High Court of Australia, Annual Report 2015-2016 (Canberra, 2016).
²⁸⁴ Federal Court of Australia, Annual Report 2010-2011 (Canberra, 2011), 44.
²⁸⁵ Ibid, 44.
²⁸⁷ Ibid, 33-34.
Further, as SRL status is not a mandatory field in the Court’s case management system the numbers presented in the Annual Report are indicative only.\textsuperscript{288}

\textbf{(c) Family Court of Australia}

Research in 2002 indicated that in contested cases approximately 31 per cent of litigants at first instance in the Family Court were SRLs and 18 per cent of litigants in appeal cases had been unrepresented at some stage during the matter.\textsuperscript{289} Litigants at appeal were more likely to be fully unrepresented rather than at first instance when partial representation was more likely. SRLs are more likely to be involved in children-only matters as opposed to property matters, have shorter matters, and finalise earlier in the process.\textsuperscript{290}

The Australian Institute of Family Studies examined the numbers of filings involving SRLs in family law matters across the Federal Court, Federal Circuit Court, the Family Court and the Family Court of Western Australia. It showed a 42 per cent increase in the number of SRL filings from 2004-05 to 2011-12 and a further increase of 8 per cent in 2012-13.\textsuperscript{291} In 2014, the Productivity Commission noted that the proportion of SRLs in the Family Court had been steady over the preceding decade at about 40-50 per cent of cases.\textsuperscript{292} This assessment was echoed more recently by the Family Court of Australia \textit{Annual Report 2016-2017}, which reported that the proportion of cases and trials involving legal representation had remained steady for the past five years.\textsuperscript{293} The Family Court however have changed their data rules and now no longer include cases that do not proceed beyond filing, are withdrawn or discontinued before appearing at court or do not have a first court event, because information about legal representation in these cases is often incomplete.\textsuperscript{294}

\textbf{(d) Federal Circuit Court of Australia (formerly the Federal Magistrates’ Court)}

Annual reports for the Federal Magistrates’ Court indicate that from 2008-2011 in approximately 36 per cent of cases at least one party did not have representation.\textsuperscript{295} In 2007-2008, 70 per cent divorce filings and 17 per cent of total filings in family law matters were by SRLs.\textsuperscript{296} The Productivity Commission reported on more recent data which indicates that by 2014 over 30 per cent of family law final applications had at least one SRL and these figures had remained relatively consistent over four years.\textsuperscript{297} Unfortunately, the most recent 2016/2017 \textit{Annual Report} does not provide data regarding numbers of SRLs.\textsuperscript{298} It does however discuss the initiatives used to assist SRLs in the court, such as a financial counseling pilot for self-represented debtors in the Bankruptcy Lists; the court-based pro-bono scheme for federal law matters; migration duty lawyer scheme; and the Self-Represented Service provided by LawRight (formerly QPILCH), Justice Connect, JusticeNet SA and Legal Aid Western Australia in different state court registries.

\textsuperscript{288}Ibid, 33.
\textsuperscript{289} Hunter et al, above n 140.
\textsuperscript{290} Productivity Commission, above n 31, 999 citing Family Court of Australia 2003 and Hunter, Giddings and Chrzanowski, above n 36.
\textsuperscript{292} Productivity Commission, above n 31, 998.
\textsuperscript{293} Family Court of Australia, \textit{Annual Report 2016-2017} (Canberra, 2017), 40.
\textsuperscript{294} Ibid, 40.
\textsuperscript{296} Federal Magistrates Court of Australia, \textit{Annual Report 2007-2008} (Canberra: Federal Magistrates Court of Australia, 2008).
\textsuperscript{297} Productivity Commission, above n 31, 1000-1001.
\textsuperscript{298} Federal Circuit Court of Australia, \textit{Annual Report 2016/2017} (Canberra, 2017).
(e) Administrative Appeals Tribunal

In 1998 Gamble and Mohr reported that 20-30 per cent of parties in the AAT were SRLs.\(^{299}\) Research for the Australian Law Reform Commission *Review of the Federal Civil Justice System* in 1999 found that levels of representation varied depending on the review jurisdiction, with SRLs much more prevalent in social welfare cases compared with veterans’ affairs matters.\(^{300}\) Additionally, most applicants received assistance from legal representation at some stage of proceedings.\(^{301}\) The AAT does not publish data in its Annual Reports on numbers of SRLs but data provided to the Productivity Commission indicates that half of finalised cases in 2012-2013 involved SRLs who were individuals, with most SRLs appearing in social security matters and citizenship and migration matters.\(^{302}\) Legal representation was more likely in veterans’ affairs and workers’ compensation matters.\(^{303}\) Representation by other professionals such as Accountants, Tax Agents, Migration Agents or other advocates was not uncommon, as was support by friends or relatives.\(^{304}\)

(f) Victoria

It remains the case that Victorian courts do not systematically publish data on SRLs in Annual Reports or on their websites. However, there is some statistical information available about SRLs in Victorian courts. As Richardson, Sourdin and Wallace noted in their 2012 Report, Sourdin reported in her 2009 study of mediation that:

- Data collected in July 2008 found that 3 per cent of litigants at the County Court of Victoria and 5 per cent of litigants in the Supreme Court of Victoria were self-represented.\(^{305}\)
- In the Court of Appeal, 11 per cent of cases commenced between May 2006 and April 2007 involved an unrepresented party.\(^{306}\)
- In the Supreme Court the majority of plaintiff SRLs in July 2008 were partially represented, compared with the majority of defendants who were fully self-represented.\(^{307}\)
- Most disputes in the County Court and Supreme Court involving SRLs were dismissed or discontinued, struck out or finalised by negotiation, with only 21 per cent of SRL cases in the County Court and 12 per cent in the Supreme Court finalised at trial.\(^{308}\)

Data supplied to the Productivity Commission by the Supreme Court indicated that SRL numbers had increased in Court of Appeal applications to over 20 per cent in the four years to 2013.\(^{309}\) The County Court also supplied information to the Productivity Commission that the majority of its SRLs appeared in matters before the Commercial List.\(^{310}\)

Weybury examined SRL data from the County Court over an 11-year period from 1 July 2000 to 30 June 2011. The data did not distinguish between litigants who were unrepresented for

\(^{299}\) Gamble and Mohr, above n 283.
\(^{301}\) Ibid.
\(^{302}\) Productivity Commission, above n 31, 1001.
\(^{303}\) Ibid, 1002.
\(^{304}\) Ibid.
\(^{305}\) Tania Sourdin, *Mediation in the Supreme Court and County Courts of Victoria* (Department of Justice of Victoria, 2009), 84.
\(^{307}\) Sourdin, above n 305, 84.
\(^{308}\) Ibid, 84.
\(^{309}\) Productivity Commission, above n 31, 1003.
\(^{310}\) Ibid. This is also the case in more recent years: County Court of Victoria, *Annual Report 2015-2016* (County Court of Victoria, 36.)
part or all of their case. Rather, it identified SRL status at the time of proceeding commencement for plaintiffs and at the time of filing an appearance for defendants.\textsuperscript{311} Weybury reported that SRL defendants far exceeded SRL plaintiffs. Total SRL numbers fluctuated markedly over the period, commencing with around 2000 cases in 2000-2001, peaking at 3000 in 2003-2004, dropping to under 1000 in 2006-2007 and rising again to 2000 in 2010-2011.\textsuperscript{312} Weybury suggested that the spike in 2003-2004 (and the subsequent decrease in the following years) was due to amendments to the \textit{Wrongs Act 1958} (Vic) which introduced a tort threshold and capped general damages.\textsuperscript{313}

Weybury noted that many defendants were largely inactive and the majority of cases with inactive SRL defendants ended with either judgment for the plaintiff or the matter being dismissed or struck out. Consequently, an inactive SRL defendant did not have significant impact on the Court.\textsuperscript{314} In 2010-2011, there were about 1000 civil cases with active SRLs,\textsuperscript{315} which represented about 30 per cent of civil cases. Weybury’s analysis indicates that about 15 per cent of cases in 2010-2011 involved an active SRL, a slight increase from approximately 11 per cent in 2000-2001.\textsuperscript{316}

Cases where both parties were unrepresented were relatively uncommon in Weybury’s study.\textsuperscript{317} The majority of such cases were commercial cases and medical negligence and other personal injury cases.\textsuperscript{318} However, the numbers of personal injury cases involving SRLs, apart from the spike in 2003-2004, declined over the decade examined.\textsuperscript{319} Weybury suggested that the decline may have been attributable to the rise of no win-no fee legal representation available in personal injury cases.\textsuperscript{320} Overall, Weybury concluded that although there are large numbers of SRLs in the County Court, the evidence did not support the argument that numbers of SRLs were increasing in that court.

More recently, the County Court of Victoria’s \textit{2015-2016 Annual Report} indicated that at 20 July 2016 there were 139 proceedings in the Commercial Division and 54 cases in the Common Law Division that involved SRLs.\textsuperscript{321} In 2015-16, 107 SRL cases were finalised in the Commercial Division and 43 in the Common Law Division.\textsuperscript{322} The 2015-2016 Annual Report notes ‘[t]he numbers of litigants choosing to represent themselves are increasing across the Division and this presents challenges for our judges. Often these types of matters take longer to determine and require a patient and understanding approach by the trial judge whilst still remaining impartial.’\textsuperscript{323}

In the Magistrates’ Court of Victoria, it appears data on SRLs is not collected, however a study of the mention court in the Heidelberg Magistrates’ Court in October 2002 found that 41 per cent of cases on one day involved an unrepresented litigant, and 50 per cent of such cases proceeded before the Court.\textsuperscript{324}

\textsuperscript{311} Weybury, above n 127, 37.
\textsuperscript{312} Ibid, 37, Fig 2.8.
\textsuperscript{313} Ibid, 38.
\textsuperscript{314} Ibid, 39-40 Fig 2.9.
\textsuperscript{315} Ibid, 41 Fig 2.10.
\textsuperscript{316} Ibid, 44 Fig 2.12.
\textsuperscript{317} Ibid, 46 Fig 2.14.
\textsuperscript{318} Ibid, 47-49.
\textsuperscript{319} Ibid, 49 Fig 2.17.
\textsuperscript{320} Ibid, 50.
\textsuperscript{321} County Court of Victoria, \textit{Annual Report 2015-2016} (County Court of Victoria), 36.
\textsuperscript{322} Ibid, 36.
\textsuperscript{323} Ibid, 26.
\textsuperscript{324} West Heidelberg Community Legal Service, \textit{Unrepresented Litigants At What Cost? A report on the implications of unrepresented litigants in the Magistrates’ Court, Victoria} (November 2002).
(g) Queensland

In 2010-2011, the number of SRLs in civil cases in the Court of Appeal of Queensland had reportedly increased consistently over a three year period with 42 per cent of civil matters involving at least one party who was self-represented.325 Nine per cent of self-represented civil appellants in 2010-2011 were successful in their appeals.326 There was a reported increase in SRLs in Court of Appeal matters in 2015-2016 from 82 to 94 matters (the latter consisting of 41 civil matters and 53 criminal matters).327 However, greater rates of matters were finalised before hearing, including 53 per cent of civil matters, which included matters abandoned, withdrawn, discontinued, struck out or stayed.328

(h) Western Australia

The Family Court of Western Australia, which was not included in Richardson, Sourdin and Wallace’s 2012 study, has experienced an increase of SRLs in financial cases and final order parenting applications, but in divorce matter numbers have stayed steady.329 However, since the Productivity Commission reported in 2014, the rise in SRLs in the Family Court of Western Australia does not appear to have continued and in fact appears to have dropped back in some matters.330 In 2016, SRL prevalence in divorce numbers stayed relatively steady at 81 percent, financial only matters dropped to around 23 per cent (compared to 32 per cent in 2013 as reported by the Productivity Commission), and parenting orders, which experienced a rise to 56 per cent in 2015, were back to 47 per cent in 2016.331 In matters seeking both parenting and financial orders, numbers rose from 27 per cent in 2015 to 31 per cent in 2016.332

(i) New South Wales

The Law and Justice Foundation has recently published a series of reports providing data insights into the NSW Courts and Tribunals. These reports provide valuable new information about SRLs in that state. In the District Court of New South Wales, there were generally high levels of legal representation.333 In the NSW District Court representation is recorded for each proceeding so it is possible to gain a picture of when a person is represented throughout a case.334 Mirrlees-Black, Forrell and Randell335 found that 6 per cent of cases involved plaintiff SRLs and 30 per cent of defendants were not legally-represented at any time in the claim proceeding.336 Rates of legal representation differed between types of claims, with high levels of representation in torts and workers’ compensation claims for both plaintiffs and defendants (though at a lower rate for defendants).337 In terms of changes to representation status

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326 Ibid, 14.
327 Supreme Court of Queensland, Annual Report 2015-2016 (Brisbane, 2016), 8.
328 Ibid, 9.
329 Productivity Commission, above n 31, 1000.
330 Family Court of Western Australia, Annual Review 2016 (Western Australia, 2016); Family Court of Western Australia, Annual Review 2014/2015 (Western Australia, 2015); Family Court of Western Australia, Annual Review 2013/2014 (Western Australia, 2014).
331 Family Court of Western Australia, Annual Review 2016 (Western Australia, 2016).
332 Ibid.
333 Mirrlees-Black, Forrell and Randell, above n 258.
334 Ibid.
335 Ibid, 53.
336 Ibid, 54. A claim proceeding is defined by Mirrlees-Black et al in the following way: The number and types of matters lodged or finalised is often used as a base measure of activity. In this section, we focus on matters commenced in the District Court as claims. Within one case there may be multiple proceedings, of which one or more will be a claim proceeding. Claim proceedings include appeals from the Local Court and Children’s Court, and so are included here. 15 Excluded from our analysis are matters or proceedings relating to: Certificates, Cross-claims, Notices of motion, Generic proceedings and Criminal proceedings: p 19.
337 Ibid, 54.
throughout the proceedings, defendants are more likely to have representation at the time they file a defence and at finalisation of cases than at the time the claim is initiated.³³⁸ Many plaintiffs and defendants did not have legal representation at time the claim was lodged, but after 30 days from lodgement, the majority of both plaintiffs and defendants had legal representation (though more plaintiffs had representation overall compared with defendants).³³⁹ Representation for defendants at the date of filing the defence is arguably a more relevant time point.³⁴₀

In the New South Wales Local Court, data insights revealed that representation may occur at different stages throughout the proceedings and people may not be legally represented but still receive some legal help.³⁴¹ Eighty-eight per cent of plaintiffs had legal representation at some point during their claim; many claims were not defended, but for those that were, 58 per cent of defendants had legal representation.³⁴² Individual plaintiffs were represented in 65 per cent of claims and 87 per cent of cases involving business plaintiffs.³⁴³

In the New South Wales Civil and Administrative Tribunal (NCAT), data on representation is complicated by the fact that applicants and respondents may be represented by non-legal agents such as real estate agents, advocates, friend or relatives, or an employee, depending on the matter division and type.³⁴⁴ Further, the type of representative (whether legal or non-legal), is often not recorded on the tribunal file or case management system.³⁴⁵ Representation was not consistently recorded across the divisions of NCAT but it appeared that organisations were more commonly represented than individuals.³⁴⁶ In the Consumer and Commercial Division, for example, 19 per cent of individual applicants and 35 per cent of organisational applicants were represented; 7 per cent of individual respondents were represented as were 17 per cent of organisations.³⁴⁷

(j) New Zealand

In New Zealand in 2009, numbers of SRLs varied between 7 and 17 per cent of litigants depending on the regional location.³⁴⁸ Grainger has suggested that SRLs do not appear to be as common in New Zealand as in Australia due to parties’ ability to access legal aid and lower legal costs.³⁴⁹ However, numbers of SRLs are not reported in the annual reports for the District Court of New Zealand, nor for other New Zealand courts, that is, the High Court, the Supreme Court and the Court of Appeal.

Other courts and tribunals in Australia do not publish data on SRLs (and many do not collect it).³⁵⁰ However, the Productivity Commission noted:

Anecdotally, representation in VCAT appears to be less than 20 per cent (VCAT 2014, p. 3). Only 2.5 per cent of parties in the Queensland Civil and Administrative Tribunal were represented in 2012-13 (pers. comm., 4 August 2014). Western Australia’s State Administrative

³³⁸ Ibid, 57.
³³⁹ Ibid, 58.
³⁴⁰ Ibid, 58.
³⁴¹ Suzie Forell and Catriona Mirrlees-Black, Data insights in civil justice: NSW Local Court (Law and Justice Foundation of New South Wales, November 2016).
³⁴² Ibid, 7.
³⁴³ Ibid, 8.
³⁴⁴ Suzie Forell and Catriona Mirrlees-Black, Data insights in civil justice: NSW Civil and Administrative Tribunal Overview (NCAT Part 1) (Law and Justice Foundation of New South Wales, November 2016), 8.
³⁴⁵ Ibid, 8.
³⁴⁶ Ibid.
³⁴⁷ Ibid, 30-31.
³⁴⁸ Smith, Banbury and Ong, above n 200.
³⁴⁹ Julie Grainger, Litigants in Person in the Civil Justice System - learning from NZ, the US and the UK (Winston Churchill Memorial Trust of Australia, 2013), 13.
³⁵⁰ Productivity Commission, above n 31, 1004.
The VAJR recommended, given its conclusion that the numbers of SRLs were increasing, that Victorian courts and VCAT review the way that they work with SRLs ‘with the aim of ensuring that judicial and quasi-judicial officers and court staff are appropriately trained to work with self-represented litigants, and that court practices and procedures are designed to accommodate the needs of self-represented litigants.’ Other recommendations by the VAJR included improvements in technology, interpreter services, provision of information and signage in plain English and other languages. Responses such as these will be discussed in Part 3.

It is commonly understood that SRLs present a number of difficulties for courts including placing pressure on administrative and judicial resources and increasing costs. The following sections canvass some of the impacts on legal actors and courts and tribunals.

2.4.3 What do we know about the impact of SRLs on judges and tribunal members?

Richardson, Sourdin and Wallace commented that SRLs are thought to increase pressure and stress on judicial officers and that SRLs take up more time because the judicial officer must explain court procedure, rules of evidence, and assist with identification of the legal issues. This observation has been reinforced through interviews with judges in recent studies by Trinder and colleagues, Weybury and Toy-Cronin.

Judges have an overriding duty to provide all parties with a fair trial. Case law sets out the obligations of judges to provide assistance to SRLs. However, the case law gives judges a wide discretion so they can adapt their procedures depending on the circumstances of the case. Judges take different approaches to how much assistance they give SRLs with some being more interventionist and others more passive or hands-off. This can lead to inconsistencies in approach between judges. Using the example of cross-examination, which SRLs find difficult, Trinder and colleagues noted in their study that judges took four main approaches:

**Sink or swim**: LIP treated as if they were a trained lawyer. No prior advice and no assistance with formulating questions or focusing on the legally relevant. LIP could be rebuked for making statements rather than formulating questions and straying off topic.

**Steer towards particular topics**: Judge gives some guidance to the LIP about what topics the LIP should address, e.g. judge to LIP husband: “Mr X, if you think the land registration system is different in [foreign country] to here, you must question Mrs X about this”.

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351 Ibid, 1004-1005.
352 Victorian Government Department of Justice and Regulation, above n 103, 470.
353 Ibid, 470.
354 Ibid, 485.
355 Richardson, Sourdin and Wallace, above n 2, 32, citing Family Law Council, above n 36 and Law Council of Australia, above n 36; Dewar, Smith and Banks, above n 36.
356 Weybury, above n 127.
357 Toy-Cronin, above n 18.
360 Pezos v Police (2005) 94 SASR 154; Weybury, above n 127.
361 Weybury, above n 127, 101.
362 Trinder et al, above n 116, 74.
This is the question you should ask: The judge offers guidance on topic to explore and also formulates questions for the LIP to deliver.

I’ll devise and deliver the questions: The judge takes over cross-examination completely using a fully inquisitorial approach. [In one case] the judge did a detailed Q&A interrogation with the LIP wife then the LIP husband, invited any further questions and then gave judgment. Some semi-represented hearings were a hybrid adversarial-inquisitorial process with the applicant lawyer running their client’s case before the judge in effect ran the LIP’s case.363

The level of assistance afforded to the SRL by the judge may raise questions about judicial impartiality and perceptions of bias towards the SRL.364 The challenges for judges in balancing the requirement to provide assistance to SRLs and maintain the perception of impartiality have been well documented and comprehensively discussed,365 including in case law.366 Kirimof and Dober have commented on the two demands on the role of judges when dealing with SRLs:

The first is maintaining impartiality. The second is to ensure a fair hearing for a party who is disadvantaged by lack of representation. The first of these calls for a minimalist approach to unrepresented parties whereas the latter calls for active intervention. It appears that active intervention has been the favoured approach in recent times.367

There are limits imposed by the Australian Constitution upon the role of judges in managing cases and litigants in the federal courts and to a lesser extent, the state courts also.368 Under Chapter III of the Constitution, judges can only exercise judicial power,369 and the courts must provide procedural fairness before an unbiased judge who affords the parties an opportunity to set out their case and challenge the opposing case.370 Murray describes the difficulties that judges face in balancing the competing demands of the public in the efficient use of court resources with those of enabling litigants to fully put their case, as ‘the case management tightrope’.371 While not referring specifically to the role of judges in dealing with SRLs, Murray argues that judicial case management practices in the federal courts are unlikely to impinge upon the Chapter III constitutional limitations.372 She argues that the constitutionality of each case management procedure used by judges will depend on whether ‘the exigencies of the case truly warrant it, and only if the hearing can still be classed as fair and unbiased in all of the circumstances.’373 Thus, when interacting with SRLs, to stay within constitutional limits, judges in federal courts at least must ensure that interventions provide both fairness to the parties and to the public in the efficient use of court resources.

363 Trinder et al, above n 116, 75.
368 Sarah Murray, The Remaking of the Courts: Less-Adversarial Practice and the Constitutional Role of the Judiciary in Australia (Federation Press, 2014) 97-9; Aon Risk Services Australia Ltd v Australian National University (2009) 239 CLR 175.
369 R v Kirby; Ex Parte Boilermaker’s Society of Australia (1956) 94 CLR 254; Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51.
371 Murray, above n 368, 93.
372 Ibid 118-19.
373 Ibid 119.
Weybury suggests that the balance has tipped towards greater judicial intervention but also argues that ‘the passive arbiter paradigm is only appropriate when both parties are represented’.374 She highlights that a truly passive approach could lead to injustice where the case involves an SRL and a powerful, represented opponent.375 However, the level of assistance that judges or adjudicators feel comfortable providing will depend on the nature and circumstances of the case and pragmatic choices made by the judge.376 Weybury argues that in any event the case law does not provide judges with firm guidance about what is permitted and what is not, which contributes to inconsistencies in approach among judges.377 The venue may also impact on this, with judges in the higher courts more likely to err on the side of caution towards less intervention. In administrative tribunals, a more relaxed approach may be permissible because of the more informal nature of proceedings. In the administrative law context, Flaherty has argued that active adjudication is vital for ensuring fairness and efficiency and a more active role for the judiciary in assisting the parties can be accommodated by existing legal principles.378 Judges who have worked in the tribunal setting may be more tolerant or accustomed to dealing with SRLs as evidenced by interviews with judicial officers in Victoria.379

There is a perception among some judges (and lawyers) that some SRLs create a range of difficulties for the courts such as ‘unmeritorious applications, non-appearances and various forms of disruptive behaviour.’380 Whether the perceptions match the reality is the question has been explored in some of the recent research on SRLs. In Trinder and colleagues’ study, for example, of these problems, non-appearances were the biggest issue; the other conduct by SRLs occurred infrequently.381

Weybury interviewed 20 judges from the County and Supreme Courts of Victoria and the Federal Court of Australia regarding their experiences and attitudes to self-represented litigants.382 She found that judges from the three courts agreed on some issues but were divided on others. Judges did not necessarily perceive that SRLs were increasing considerably or that SRLs were all problematic or had a significant impact on the court, but there was an ‘overwhelmingly negative perception of the competence of self-represented litigants.’383 The perceived lack of competence of SRLs was attributed to the lack of knowledge of substantive and procedural law, lack of objectivity, and challenges with determining legal relevance.384 Some judges stated that the aim of providing assistance to the SRL was to help the judge ascertain what the SRL’s case was and to ensure that the SRL understood the case against them.385 In terms of the views of judges on what measures courts should take towards SRLs, not all measures suggested by judges were designed to assist SRLs; some were aimed at deterring them.386 The judges interviewed generally agreed that the optimal remedy for the problems would be for the SRL to have pro bono legal representation (which is not easily accessible in all courts).387

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374 Weybury, above n 127, 82.
375 Ibid.
376 Ibid, 102; Murray, above n 368.
377 Weybury, above n 127, 105.
379 Weybury, above n 127.
380 Trinder et al, above n 116, 30.
381 Ibid.
382 Weybury, above n 127.
385 Ibid, 121.
386 Ibid, 133.
Weybury suggests that judges’ difference of opinion on the impact of SRLs on their court was probably due to their individual experiences with SRLs.\(^{388}\) She also found that the judges interviewed differed considerably regarding the assistance they were willing to provide to SRLs.\(^{389}\) Many suggested that ‘it depended on the circumstances of the case’ and some preferred to err on the side of assisting the SRL rather than not.\(^{390}\) Many judges explained procedure and defined the issues at the beginning of a trial but only half of those interviewed thought it appropriate to help with examination and cross-examination of witnesses.\(^{391}\) Importantly, Weybury suggests that although the judges all identified problems in dealing with SRLs, they also believed that generally the issues could be dealt with and did not perceive that matters had reached a crisis point with SRLs.\(^{392}\) The judges who saw SRLs as problematic in the County Court of Victoria, cited the significant amount of time that they took up and the extra work they created for courts.\(^{393}\)

Querulous or vexatious litigants continued to cause most problems for judges and this also influenced the views of some judges of SRLs generally.\(^{394}\) As Richardson, Sourdin and Wallace noted,\(^{395}\) querulous and vexatious litigants often inform stereotypes about SRLs. Weybury confirms that the perceptions of SRLs as generally problematic continue to persist, though the experiences of judges will influence these perceptions.\(^{396}\) She notes the difficulties in striking a balance between providing access to justice and managing the challenges posed to the administration of justice by querulous and vexatious litigants.\(^{397}\)

The challenges that SRLs have with complying with legal procedures and legal norms have been noted above. Judges in Toy-Cronin’s study demonstrated a commitment to trying to give SRLs a fair hearing and on the whole, were patient and courteous with them.\(^{398}\) Most judges indicated that they prefer litigants to be legally represented but did not believe that the right to represent oneself should be taken away.\(^{399}\) Toy-Cronin noted there may have been a softening towards SRLs by judges in more recent years.\(^{400}\)

Judges in Toy-Cronin’s study spoke of the limited training that they had had in managing SRLs.\(^{401}\) Judges will generally spend time at the start of the case explaining the process and terminology to the SRL. Other techniques that they used with SRLs included:

- Letting them talk (until they ‘run out of steam’) and saying nothing so that the SRL feels like they have said all they need to say and that the judge will have all the information they need to make the decision, that is, to create a sense of procedural justice. This had to be balanced with not wasting the court’s time.\(^{402}\)
- Asking questions where the SRL was not willing or able to speak at length and the judge needs to draw out the case in order to understand it.\(^{403}\)
- Relying on assistance from opposing counsel to help explain the case.\(^{404}\)

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388 Ibid, 139.
389 Ibid, 139.
390 Ibid, 112.
391 Ibid, 139.
392 Ibid, 140.
394 Ibid, 140.
395 Richardson, Sourdin and Wallace, above n 2.
396 Weybury, above n 127, 140.
397 Ibid, 141.
398 Toy-Cronin, above n 18, 188.
399 Ibid, 187.
400 Ibid, 188.
401 Ibid, 188.
402 Ibid, 189.
403 Ibid, 190.
404 Ibid, 191.
However, Toy-Cronin observed that while judges did these things to assist the SRL, they also sent mixed messages through other conduct which limited access, or provided only formal access or made the SRL feel like an outsider.\textsuperscript{405} Reasons for this included:

- The tension between providing access to the courts and meeting the aim of the speedy and efficient disposition of cases while trying to achieve both substantive and procedural justice.
- The tension between providing access to the courts while also maintaining the role of neutral arbiter when the SRL is not able to conduct the case effectively themselves.\textsuperscript{406}
- The tension between access to the courts and protecting the legal profession at the same time, by communicating to SRLs that they are outsiders and privileging legal counsel as a means of protecting the territory of the legal profession.\textsuperscript{407}
- Differences in understanding and expectations between SRLs and the legal actors about the purpose of courts. Some SRLs saw the court as their space as a citizen and consumer to argue their case, whereas others saw it as a foreign land where their raw emotion challenges the work of the legal actors.\textsuperscript{408}

In the cases of persistent litigants, judges may also feel fear, both about making an appealable decision and about the potential for physical attacks and harassment.\textsuperscript{409} However, Toy-Cronin notes that:

> The origin of many of the tensions between LiPs and the courts can be found in the process that comes after court. The time it takes to write judgments, and the threat of complaints and appeals, pose particular problems in terms of consumption of court resources. Persistent litigants amplify these challenges, presenting a particularly high risk of launching complaints and appeals, distracting Judges from what they consider to be their core function. While still formally open to LiPs, the court emphasises the limits of LiPs’ competence to access the courts through judgments and costs awards, and discourages LiPs through a presumption against awarding costs when they are successful. Some LiPs take these messages as evidence of institutional bias against them. Along with disappointed expectations in what the court might deliver by the way of finality and enforcement, the process after court left some LiPs frustrated and disillusioned.\textsuperscript{410}

In Canada, Goldschmidt and Stalans investigated how much assistance a judge can give before their impartiality is questioned by surveying 210 family law practitioners using hypothetical scenarios in a family law matter.\textsuperscript{411} They found that whether an SRL receives a favourable outcome and whether the judicial assistance relates to a substantive or procedural matter will determine whether lawyers perceive that the judge has not been impartial.\textsuperscript{412} There exists an obligation on judges in Canada (as in Australia) to provide reasonable judicial assistance.\textsuperscript{413} In fact, in Goldschmidt and Stalans’ study, many lawyers felt that judges should provide more assistance to SRLs.\textsuperscript{414}

Their study highlights that assessments about bias and impartiality are not straightforward. Lawyers did not perceive that the judge was lacking impartiality when they helped the SRL with procedural instructions or accommodating the SRL who had complied imperfectly with procedural rules (as opposed to non-compliance with rules).\textsuperscript{415} Judges who strictly enforced
procedural rules on the SRL were seen to be biased against the SRL in favour of the represented party. However, lawyers did perceive bias when the judge provided assistance in relation to strategic, evidentiary matters that were substantive in nature. The matters that lawyers were divided on were a grant of an adjournment to the SRL to subpoena a witness or when the judge elicited evidence from an SRL on a matter that was in the pleadings but not in their evidence. Judges may struggle to walk the line between permissible and impermissible assistance with some preferring to err on the side of caution and constrain their conduct to avoid the perception of bias. This may lead to a lack of consistency in approach. Toy-Cronin also found that some lawyers believed that judges did a good job of hearing SRLs and making them feel entitled to be there, while other lawyers felt that the judge ‘bent over backwards’ to help SRLs, giving them multiple chances and a lot of leeway, but that this was often reasonable in the circumstances.

The overwhelming increase in SRLs in some state courts in the United States has led to suggestions that the justice landscape and the adversarial paradigm have been profoundly changed. The preliminary results of a mixed method, multisite investigation of state courts of the United States, where in-person interactions are routine and trials are rare, indicates that the judicial role is transforming, such that judges are left to find solutions for themselves, creating an ethically ambiguous climate where law is evolving at the local level. While the level of SRLs in US state courts currently far exceeds those in Australian courts, the study raises important questions about the lengths to which judges can and should go in accommodating SRLs. This includes questions about whether judges are addressing inequality or reproducing it and the wider impact these practices may have on the legal system.

2.4.4 What do we know about the impact of SRLs on opposing parties and their lawyers?

Richardson, Sourdin and Wallace highlighted that:

- Lawyers for the parties opposing a SRL are likely to have to assist the SRL in the preparation and lodgement of court documents.
- Lawyers for the opposing party are likely to have to address irrelevant issues and evidence as part of the SRL’s case.
- A party opposing a SRL or a witness for that party may be required to undergo cross-examination by a SRL which may be traumatic in some instances.
- The party opposing the SRL may expend or incur more legal costs as a result of delays or time taken at trial by the SRL.
- The party opposing a SRL may feel a sense of injustice and leave feeling aggrieved with the court process because of the assistance provided to the SRL.

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416 Ibid.
417 Ibid.
418 Ibid.
419 Ibid.
420 Ibid.
421 Toy-Cronin, above n 18, 191-192.
423 Ibid.
424 Richardson, Sourdin and Wallace, above n 2, 32.
425 Gamble and Mohr, above n 283; Family Law Council, above n 36.
426 Gamble and Mohr, above n 283; Family Law Council, ibid.
427 Family Law Council, ibid; Law Council of Australia, above n 36.
428 Family Law Council, ibid.
429 Law Council of Australia, above n 36.
Self-representation is a significant concern in cases involving family violence where the SRL is permitted to cross-examine the opposing party who is the alleged victim of the family violence.\(^{430}\)

The Productivity Commission noted that the impact of SRLs on the other party and their lawyer is unclear.\(^{431}\) There are certainly anecdotal reports from lawyers and lawyer associations that SRLs make a case more difficult and that judges go out of their way to provide advice and explanations to the SRL.\(^{432}\) The assistance that the judge and the opposing lawyer may provide to an SRL may be particularly challenging for their client, the opposing party.\(^{433}\) They may feel disadvantaged by the relaxing of procedural rules and changes in the order of the case or other strategies that the judge may adopt.\(^{434}\) The assistance that judges are required to give to SRLs may lead to perceptions in the opposing party that the SRL has been favoured or unduly assisted.\(^{435}\) Bevan has suggested that opposing counsel risks becoming ‘counsel for all’ when opposite an SRL.\(^{436}\)

In New Zealand, a Ministry of Justice study of family law cases in 2009 found that nearly all represented litigants felt their case had been affected by SRLs ‘filing numerous petty applications, lying, not providing information or their responses on time, and the information presented being more emotionally charged’.\(^{437}\) However, just under half felt that the outcome would have been the same had the other party also been legally represented and some also felt that they had received a more favourable outcome because the other side was a SRL.\(^{438}\) Many represented litigants thought the SRL had increased their costs and they felt they had been affected personally by the SRL through increased stress, abuse and defamation from the SRL, and the SRL dragging the matter out.\(^{439}\) SRLs in private family law matters in the UK were found to cause problems by refusing to engage with proceedings, and occasionally, aggressive and disruptive behaviour.\(^{440}\)

Toy-Cronin has also examined the impact of SRLs on opposing lawyers and their views about self-representation.\(^{441}\) Judges and lawyers were unanimously of the opinion that SRLs increased the costs for the opposing litigating party.\(^{442}\) Lawyers opposing SRLs will often give them some information about process and the steps that they need to take. This was seen as ‘acting their own client’s interest, as keeping the [SRL] on track reduced the likelihood of adjournments and therefore costs to their client.’\(^{443}\) But opposing lawyers would not assist SRLs if it compromised their client’s position.\(^{444}\) Many lawyers advised the SRL to get legal representation or seek legal advice but also treated the SRL with courtesy and respect. However, many lawyers were wary of SRLs and employed defensive practices such as keeping written records of any communication or conversations and maintaining a formal tone when communicating with the SRL.\(^{445}\) Toy-Cronin found that lawyers change their negotiation and communication strategies when dealing with SRLs, with some counsel avoiding

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\(^{430}\) Productivity Commission, above n 31, 501; Trinder et al, above n 116.

\(^{431}\) Productivity Commission, ibid, 502.

\(^{432}\) Ibid.

\(^{433}\) Bevan, above n 145.

\(^{434}\) Ibid.

\(^{435}\) Productivity Commission, above n 31, 501.

\(^{436}\) Bevan, above n 145.

\(^{437}\) Smith, Banbury and Ong, above n 200, 56.

\(^{438}\) Ibid.

\(^{439}\) Ibid, 75.

\(^{440}\) Trinder et al, above n 116.

\(^{441}\) Toy-Cronin, above n 18.

\(^{442}\) Ibid, 193.

\(^{443}\) Ibid, 150.

\(^{444}\) Ibid.

\(^{445}\) Ibid.
negotiation with SRLs because it was perceived as too risky.  Similarly, Trinder and colleagues found there were different styles of interactions with SRLs with some counsel were more likely to negotiate with SRLs than others. Some Law Societies have developed guidelines to assist legal practitioners when dealing with SRLs such as the Queensland Law Society’s Guidance Statement No 9 – Dealing with Self-Represented Litigants (published 11 December 2017). The statement covers the ethical dilemmas that lawyers face with dealing with SRLs including costs disclosures, communication with SRLs, disclosure process, procedural assistance, and cross examination.

In Toy-Cronin’s study, SRLs reported negative experiences not only with their own counsel (often in relation to the costs charged) but also regarding the ways opposing lawyers dealt with them. There was perception that they were often treated with a lack of dignity and respect. Toy-Cronin found that some behaviour by the opposing lawyer was suggestive of bullying and intimidation. A minority of SRLs spoke positively about being treated with civility and the helpfulness of the opposing lawyer.

Bertrand and colleagues’ study of Canadian lawyers’ views of SRLs in family law disputes indicated that the overwhelming majority of lawyers surveyed thought that SRLs are either treated very well by the judiciary or that they receive good treatment. The majority also believed that SRLs increase costs for the other side and that settlement was ‘less likely’ or ‘much less likely’ where they were involved. Regarding outcomes, just over half of lawyers thought there was no difference in outcomes for plans for children and financial matters when the matter settled, but were less positive when the matter was determined by a judge. A substantial percentage thought SRLs received worse outcomes whether the matter settled, and when it was heard by a judge. Around 10 per cent of lawyers thought SRLs received better outcomes than if they were legally represented when the matter settled, but the perception of better outcomes for SRLs increased to around 20 per cent when the matter was resolved by a judge. The additional challenges for lawyers when opposing SRLs included that SRLs often: have unrealistic outcome expectations; are less likely to settle; look to the opposing lawyer for information and advice; upset the lawyer’s client if it appears the judge is favouring the SRL and can lead to increased costs.

2.4.5 What do we know about the impact of SRLs on court staff?

The demands placed on court staff by SRLs have been explored in a number of reports and studies. As noted by Richardson, Sourdin and Wallace, SRLs are thought to increase the workload of the court or tribunal. Court registry staff are often the first point of contact within

446 Ibid.
447 Trinder et al, above n 116.
448 Ibid, above n 111.
449 Ibid.
450 Ibid.
451 Ibid.
452 Lorne Bertrand, Joanne Paetsch, Nicholas Bala and Rachael Birnbaum, Self-represented litigants in family law disputes: Views of Alberta lawyers. (December 2012).
453 Ibid.
454 Ibid.
455 Ibid.
456 Ibid.
457 Ibid.
458 Lord Otton, Interim Report of the Working party Established by the Judges’ Council into Litigants in Person in the Royal Courts of Justice (1995); Moorhead and Sefton, above n 40; Macfarlane, above n 111, 54; Smith, Banbury and Ong, above n 200.
459 Richardson, Sourdin and Wallace, above n 2, citing Law Council of Australia, above n 36 and Gamble and Mohr, above n 283.
the court system for SRLs.\textsuperscript{460} A common challenge for court staff is that they are not permitted to provide legal advice to SRLs and must limit themselves to providing information about process. Understanding and applying this rule remains one of the biggest struggles for court staff when dealing with SRLs.\textsuperscript{461} Toy-Cronin’s study found that the line drawn between advice and information varies from one court staff member to the other.\textsuperscript{462} The difficulties in applying the rule are compounded by a lack of sources of free or low cost legal advice (such as duty lawyer services or community legal centres) that SRLs can be referred to.\textsuperscript{463} Court staff were likely to suggest minor changes to documents or accept them if they met the basic requirements.\textsuperscript{464} Registry staff are primarily concerned about the amount of time that dealing with an SRL takes.\textsuperscript{465} There was some indication that the approach of some staff was to spend a large amount of time the first time the SRL visited court, which cut down on time spent in later visits.\textsuperscript{466} Toy-Cronin found examples of court staff who purposefully took a kind and courteous approach to SRLs, particularly those who are vulnerable or who had specific needs.

In Canada, Macfarlane also reported that court staff find the distinction between legal information and legal advice the most difficult problem when dealing with SRLs.\textsuperscript{467} Because there are no clear, workable guidelines as to the distinction, this can place a burden on staff who are already working under enormous pressure due to the growing numbers of SRLs in Canada.\textsuperscript{468} Some court staff were prepared to go further than others and SRLs often cited this kindness and recognised the pressure that court staff are working under.\textsuperscript{469} Increasingly it would seem, court staff recognised that SRLs are now a reality and part of their work, with many empathetic towards the plight of SRLs.\textsuperscript{470}

One of the challenges facing court staff in the UK, highlighted by Trinder and colleagues’ study, is that ‘procedurally challenged’ SRLs often sent repeated correspondence to the court, which fell into two categories:

First were procedural requests and requests for procedural advice: wanting an adjournment, wanting to obtain a transcript, wanting to know how to comply with directions to file a response if the other party had not yet filed their statement, reminding the court to send correspondence to them rather than to their former solicitors, asking the court to take actions by letter rather than filing the appropriate application form. The second category of correspondence appealed to the court as the adjudicator of fairness, constructing a moral universe of complaint and justification and seeking the court’s intervention to resolve problems in the absence of anywhere else to turn. In these cases the court was bombarded with complaints about contact incidents, alleged inaccuracies in Cafcass reports and documents filed by the other party, and the other party’s litigation behaviour.\textsuperscript{471}

The research also indicates that the pressure and frustrations that SRLs experience flow on to court staff. Court staff often experience an ‘emotional toll’ of dealing with and worrying about the SRLs that they encounter, some of whom are in desperate situations including those who may be experiencing family violence.\textsuperscript{472} Many staff want to assist SRLs and do the best they can for them, but this is not easy. Macfarlane notes that the job of court staff in Canada is

\begin{thebibliography}{99}
\bibitem{460} Toy-Cronin, above n 18.
\bibitem{461} Moorhead and Sefton, above n 40; Toy-Cronin, above n 18.
\bibitem{462} Toy-Cronin, above n 18.
\bibitem{463} Ibid.
\bibitem{464} Ibid.
\bibitem{465} Ibid.
\bibitem{466} Ibid.
\bibitem{467} Macfarlane, above n 111, 10.
\bibitem{468} Ibid.
\bibitem{469} Ibid; Toy-Cronin, above n 18.
\bibitem{470} Macfarlane, above n 111.
\bibitem{471} Trinder et al, above n 116, 25.
\bibitem{472} Macfarlane, above n 111, 10; Smith, Banbury and Ong, above n 200.
\end{thebibliography}
becoming highly stressful, leading to increasing numbers of staff on stress leave and higher staff turnover.\textsuperscript{473}

### 2.4.6 What do we know about the impact of SRLs on court processing time?

The AIJA has recognised that self-representation is likely to be more problematic in higher courts due to rules of evidence and procedural complexity.\textsuperscript{474} SRLs are said to take up more time of all court staff including judges but the evidence is mixed as to the extent of additional resources that SRLs consume and the costs to courts and tribunals have not been quantified.\textsuperscript{475} Accordingly, it is not possible at this point in time to say that SRLs generally have a negative impact on the duration of a case or the time spent in court. The Productivity Commission summarised the mixed evidence regarding the use of resources stating that most studies suggest that SRLs consume more court resources,\textsuperscript{476} but noted that there were some exceptions.\textsuperscript{477} Williams has noted that the evidence regarding the impact of SRLs on case duration is mixed: cases involving active SRLs are likely to take longer but those involving inactive SRLs are likely to be quicker. The case type will also affect duration.\textsuperscript{478} Even when cases do take longer, it may not be much longer than cases where both parties are represented, and additional delay does not necessarily equate to an increased burden for the court.\textsuperscript{479} The evidence that settlement in cases involving SRLs often does not occur or occurs later in the proceedings, as discussed in the next section of this report, will also have an impact on the duration of cases.

The 2009 New Zealand Ministry of Justice study of family law cases found that that just under two-thirds of SRLs were not satisfied with the speed with which their case progressed through the court.\textsuperscript{480} Represented litigants thought the fact that the other party was an SRL had prolonged the case because they ‘rehashed the same material in court, brought up irrelevant material, [were] unwilling to cooperate or negotiate, or lacked the necessary legal knowledge’.\textsuperscript{481} The analysis of cases indicated that it took more time to reach an outcome when an SRL was involved but this did not mean that there were more hearings held for each case.\textsuperscript{482} Maclean and Eekelaar’s study found that there was a greater likelihood of adjournments and re-listing of cases due to SRL non-attendance.\textsuperscript{483}

A more recent study in the High Court of New Zealand’s civil jurisdiction in 2014-15 found no evidence that SRLs contribute to delays.\textsuperscript{484} Only a small number (six, constituting 6.7\%\footnote{\textsuperscript{485} Bridgette Toy-Cronin, Bridget Irvine, Kayla Stewart and Mark Henaghan, \textit{The Wheels of Justice: Understanding the Pace of Civil High Court Cases} (Project Report, 2017) 94.} of cases in that court over the period studied involved SRLs. Of those six cases, the researchers found that in only two could the involvement of an SRL be said to have contributed to delays.\textsuperscript{485} In both cases the SRLs were very active in proceedings. The authors commented that:

\textsuperscript{472} Macfarlane, above n 111.
\textsuperscript{474} Ibid; Productivity Commission, above n 31, 498-499.
\textsuperscript{475} Citing for example Dewar, Smith and Banks, above n 36; Senate Legal and Constitutional References Committee, above n 35; Family Court of Australia, above n 41.
\textsuperscript{476} Moorhead and Sefton, above n 40; Judith McMullen and Debra Oswald, ‘Why do we need a lawyer? An empirical study of divorce cases’ (2010) 12 \textit{Journal of Law and Family Studies} 57.
\textsuperscript{477} Williams, above n 140.
\textsuperscript{478} Moorhead and Sefton, above n 40; Williams, above n 140.
\textsuperscript{479} Smith, Banbury and Ong, above n 200.
\textsuperscript{480} Ibid, 60.
\textsuperscript{481} Ibid, 62.
This supports other research that has found that where LiPs actively engage with the court process, proceedings may be lengthened, but that most LiPs take a very limited role in proceedings and do not cause delay.

The study examined the range of factors that might contribute to delay in civil proceedings, and found that it is very difficult to determine which factors are causal in any given case. In contrast, Trinder and colleagues’ research suggested, consistent with Moorhead and Sefton’s earlier study, that SRL cases ‘appear less likely to settle and may require longer hearings and more hearings’. There is a significant amount of work to be undertaken by litigants outside of the courtroom before the hearing, which is technically and practically demanding. In order for the hearing or trial to run smoothly and on time, these tasks need to have been completed. The inability of many SRLs to do so explains one reason why cases involving SRLs may progress slowly and absorb more court time. In addition, hearings involving SRLs are ‘far less standardised and predictable than fully represented hearings’. Trinder and colleagues noted that in cases involving SRLs shorter procedural hearings were not usually any longer but substantive hearings were. This appeared to be due to judges spending more time explaining the process to the SRL (in order to balance things out between the SRL and the legally represented party) and the SRL was often given more leeway in the conduct of their case.

Research indicates that SRLs struggle most with determining legal relevance. This leads to SRLs putting large amounts of detailed facts before the court instead of only presenting the facts that are relevant to the law, arguing the law and presenting a theory of the case, as they are required to do. The emotional involvement of the SRL in the case may also cloud their ability to determine legal relevance. Often the documents prepared by SRLs do not conform to legal style or use correct language or terminology and can be difficult to read for the judges and opposing lawyers. The court will often accept such documents prepared by SRLs for the sake of efficiency and to minimise further delays but reading these documents can be time consuming for the judge. SRLs’ misunderstanding of how the legal system works and what is required of them can also create extra work for judges, lawyers and court staff.

In Toy-Cronin’s study, judges suggested that writing judgments in cases involving SRLs often takes longer due to the issues with documents filed by SRLs, their style of presentation in court and the resulting time it then took to ensure the judge has accurately understood the case. Judges and lawyers differed in their opinions as to whether the involvement of SRLs affected the quality of judgment. One way of addressing these concerns is case-management to reduce the numbers of adjournments, increase timely filing of material,

486 Ibid, 11.
487 Moorhead and Sefton, above n 40.
488 Trinder et al, above n 116, 52.
489 Ibid.
490 Ibid.
491 Ibid.
492 Ibid.
493 Ibid, 56.
494 Ibid, 57.
495 Ibid.
496 Ibid. Moorhead and Sefton, above n 40; Toy-Cronin, above n 18.
497 Ibid.
498 Ibid.
499 Ibid.
500 Ibid, 215.
identification of issues, thereby assisting cases to progress more quickly than they would have without case management.502 Courts that have adopted this approach with SRLs will be discussed in Part 3.

Interestingly, the anecdotal evidence about the impact of SRLs on tribunal proceedings sometimes points in the opposite direction. It has been suggested that certain tribunals, including the VCAT, QCAT and the AAT have ‘become too formal, with lawyers, expert witnesses and advocates dominating proceedings’ and that this ‘creeping legalism’ has a tendency to delay and overly complicate proceedings and to increase its cost.503 This perception was discussed in the Productivity Commission’s Access to Justice Report, and formed the basis of its recommendation that the use of legal representation should be limited in tribunals, and existing restrictions should be enforced.504

While the claim that lawyers increase the duration and cost of tribunal proceedings has been made by a range of people, including the former President of VCAT, the Hon Justice Bell, the Queensland Department of Justice and Attorney-General, the (former) SSAT, and several community legal centres (in submissions to the Productivity Commission), there do not appear to be any empirical studies which support it (or which contradict it). As the Productivity Commission noted, and as discussed above, most tribunals do not collect reliable data on representation and its relationship to case duration, complexity and outcomes.

2.4.7 What do we know about the impact of SRLs on matter outcomes?

Richardson, Sourdin and Wallace highlighted that the outcomes for SRLs may not be as favourable had they been legally represented, but there is little data in Australia to enable conclusions to be drawn.505 The outcomes depend on factors such as the complexity of the court or tribunal processes and the subject matter of the litigation but the data to support this was limited.506 They noted:

Some studies have shown that SRLs are less likely to be successful than those who have legal representation with a greater likelihood of the case being discontinued, dismissed or having costs ordered against them. Poorer outcomes for SRLs may be related to difficulties with negotiation and understanding and compliance with court procedures...

2.10 In terms of hearing processes, although case duration might be shorter in some cases when a SRL is involved, this does depend on whether the person was inactive or active during the case, and in any event may not reflect whether a just outcome was achieved. In a research report prepared as part of the Australian Law Reform Commission Review of the Federal Civil Justice System it was found that in the Administrative Appeals Tribunal, success at a hearing may be linked to representation. In that report an unrepresented person was successful 22.5 per cent of the time compared with 51.3 per cent for represented parties. Matters in the AAT were more likely to be resolved by consent when parties were represented compared to matters where the party was self represented. These matters were more likely to go to hearing.507

Richardson, Sourdin and Wallace also noted in their report that the Family Court of Australia and the Federal Circuit Court of Australia (then the Federal Magistrates’ Court of Australia) collect data on case outcomes and the point at which a matter settles, such as the first

502 Victorian Government Department of Justice and Regulation, above n 103, 480.
503 Hon Justice Kevin Bell, One VCAT: President’s Review of VCAT, 30 November 2009, 21; Productivity Commission, above n 31364; Queensland Department of Justice and Attorney-General, Review of the Queensland Civil and Administrative Tribunal Act 2009, consultation paper, December 2012, 17.
504 Productivity Commission, above n 31373.
505 Richardson, Sourdin and Wallace, above n 3, v.
506 Ibid, vi.
507 Richardson, Sourdin and Wallace, above n 2, 17-18 citing Gamble and Mohr, above n 283; Australian Law Reform Commission, above n 300 and Hunter et al, above n 140.
directions hearing, court conference, when the trial date is set or during the trial process.\textsuperscript{508} The Family Court reports on at how many cases generally settle at which points\textsuperscript{509} and although it does not report on how many SRLs settle at which points in the court process, the Court may have the capacity to create such reports.

Regarding outcomes, the following information has been gleaned from the Annual Reports of other courts:

- The County Court reported that Judicial Registrars completed 43 judicial resolution conferences in 2015-2016, of which 23 were wholly or partly settled.\textsuperscript{510} Nine of the settled proceedings involved SRLs.\textsuperscript{511}
- The Supreme Court of Queensland report reported that SRLs were successful in only 4.9 per cent of their civil appeals in 2015-16 (compared with 18.9 per cent in criminal appeals).\textsuperscript{512} It was suggested that these figures indicate a 'need for increased legal aid funding and pro bono assistance at appellate level'.\textsuperscript{513}

Weybury reports that the High Court kept data on the success rates of SRLs up until 2005-2006 and that during the period 1992-93 to 2005-2006 only 1.5 per cent of SRLs were successful in special leave applications.\textsuperscript{514} In comparison, represented applicants were successful in 27.7 per cent of cases.\textsuperscript{515}

In the UK, Williams found that the evidence regarding outcomes from medium quality and some high quality studies suggests that there is a negative impact on outcomes for SRLs due to the lack of representation.\textsuperscript{516} However there was also research that suggested that specialist lay representation may be just as effective as legal representation.\textsuperscript{517}

In family law cases in New Zealand research indicates that SRLs are less likely than represented litigants to have gone through court-ordered counselling and mediation.\textsuperscript{518} That research highlighted that about one third did not understand what was said in court, but a large majority understood the outcome of the appearance in court and what would happen next.\textsuperscript{519} Two-thirds of SRLs were satisfied with the outcome and thought the outcome was fair.\textsuperscript{520} Interestingly, represented litigants were more likely than SRLs to be dissatisfied with the outcome. The reasons for this included that they felt the decision was unfair, the case was drawn out unnecessarily, they did not feel well-represented, or felt aggrieved that the SRL had not turned up on the day which affected the decision and added expense.\textsuperscript{521} More than half of SRLs thought they would have received the same outcome had they been represented.\textsuperscript{522} Most key informants involved in the study felt that SRLs received fair outcomes.\textsuperscript{523} An important finding from the study was that an examination of outcomes in the data-set led to the conclusion that successful outcomes (whether an application was granted or not,
depending on whether the SRL was an applicant or respondent) were not affected by a lack of legal representation. 524

There have been a number of other studies examining the effect of having a lawyer on outcomes. Sandefur’s meta-analysis of such US studies concluded that parties are more likely to win when legally represented but the relative advantage of being legally represented or an SRL varies significantly. 525 She noted that legal representation is most likely to be advantageous in adversarial settings and in procedurally complex areas of law. 526 In contrast, Greiner and Pattanayak found no significant effect on outcomes for SRLs in their randomised trial, nor in the other literature on outcomes for SRLs. 527

It is difficult to draw conclusions about the impact of self-representation on outcomes because of the interplay of factors such as the merits of the case or the skill of the SRL from the effect of being self-represented. 528 The Productivity Commission noted Greiner and Pattanayak’s observations about the difficulty in measuring the impact of self-representation on outcomes because of the trouble in separating the ‘hopeless, sure-win, or representation-makes-a-difference cases.’ 529 Toy-Cronin highlights that:

…whether lawyers change case outcomes is very difficult to determine empirically. There are many confounding factors, including what counts as a good outcome, how outcomes can be measured, the strength of the case, the quality of the lawyer, the ability of the litigant, the nature of the forum, the approach of the judge, and the complexity of the law on the issue. 530

Some SRLs may abandon meritorious cases and may not achieve as much financial compensation as legally represented litigants, although this may not always be the case. 531 Toy-Cronin 532 summarises the evidence regarding outcomes:

- There is evidence that suggests SRLs are more likely to abandon their case, ‘lumping it’ as it is sometimes referred to. 533
- There is consistent but not conclusive evidence that SRLs who do not abandon their case are less likely to settle their case compared to represented litigants. 534
- There is some evidence that suggests that SRLs receive less favourable adjudicated outcomes than litigants who have legal representation but it is inconclusive, and if being represented does make a difference it is not clear how much or why it makes a difference to outcomes. 535 The research highlights that determining whether an outcome is better or not is not clear cut: does it relate to monetary outcomes, or whether the outcome is more legally accurate or substantively just? 536 There is some evidence to suggest that lawyers make the most difference when the procedure is complex. 537

524 Ibid, 59.
525 Rebecca Sandefur, Lawyer, Non-lawyer and Pro Se Representation and Trial and Hearing Outcomes (paper presented at the 1st Annual Empirical Legal Studies Conference, University of Texas, Austin, October 2006).
526 Ibid.
528 Toy-Cronin, above n 18; Productivity Commission, above n 31, 496.
529 Productivity Commission, above n 31, 496 citing Greiner and Pattanayak, above n 527, 2209.
530 Toy-Cronin, above n 18, 30.
531 Productivity Commission, above n 31, 497.
532 Toy-Cronin, above n 18, 30-32.
534 Moorhead and Sefton, above n 40, 258; Trinder et al, above n 116, 52.
535 Sandefur, above n 517; Greiner and Pattanayak, above n 527, 2175-2182.
536 Sandefur, above n 517; Toy-Cronin, above n 18.
537 Sandefur, above n 517 cited by Toy-Cronin, ibid.
Even when an outcome is substantively just, the question arises as to whether SRLs’ experience of courts and the justice system is perceived by them as procedurally fair. Research suggests that procedural justice is often as important to litigants as the substantive outcome.\textsuperscript{538} Procedural justice involves having had opportunities for participation or voice, a neutral focus, trustworthy authorities and being treated with dignity and respect.\textsuperscript{539} Procedural justice increases the perceptions of the legitimacy and authority of courts, thus when litigants perceive the process as fair, they are more likely to accept and follow the decisions of the court.\textsuperscript{540}

SRLs may be less likely to settle prior to hearing because they often do not understand that, within courts and among the legal profession, there is a push to resolve disputes before reaching the court door.\textsuperscript{541} There is a lack of understanding by some SRLs that court is seen as a last resort and that most lawyers will take a conciliatory approach in order to settle before adjudication.\textsuperscript{542} Toy-Cronin highlights that it ‘comes as a surprise to many LiPs that much litigation work occurs outside the court and that through the preparatory stage and right up to the door of the courtroom, there is encouragement to settle.’\textsuperscript{543} Trinder and colleagues’ study also highlights the amount of work in a family case that happens outside the courtroom. SRLs are required to undertake a wide range of legal/technical tasks, as well as a focus on settlement, which requires a lot of preparatory work that a lawyer would generally undertake.\textsuperscript{544} Trinder and colleagues found that where both parties had legal representation the case was more likely to resolve by consent than by adjudication and involve fewer and shorter hearings, when compared to cases involving SRLs.\textsuperscript{545} They noted, however, that the sample in the study was a small one therefore firm conclusions could not be drawn about the representative nature of these findings.\textsuperscript{546}

In Toy-Cronin’s study, the majority of SRLs proceeded to adjudication, which is consistent with findings in international studies.\textsuperscript{547} Maclean and Eekelaar’s research also suggests that SRLs who do not receive any legal advice prior to a court hearing in family matters are more likely to reach court and not settle.\textsuperscript{548} The reasons for the lower rates of settlement include:

- It is hard to convince SRLs that they should not have their day in court;
- The lack of understanding by SRLs of the legal process means they are less able to understand where the process will lead and to assess what outcome is realistic and reasonable;
- Many SRLs manage their case in a reactive way and lack a strategic view or ability to evaluate settlement offers;
- SRLs are often too emotionally involved to make detached decisions about settlement;
- SRLs may not trust the opposing lawyer, and may feel that offers from the opposing lawyer are designed to bully them, and so regard the offers suspiciously;
- Lawyers may also avoid settlement discussions because of fears that they may be perceived by the SRL as a bully and that it is unsafe to attempt to negotiate with the SRL because the SRL may not respect the ‘without prejudice’ rule;

\textsuperscript{538} Toy-Cronin, ibid.
\textsuperscript{541} Moorhead and Sefton, above n 40.
\textsuperscript{542} Toy-Cronin, above n 18, 164.
\textsuperscript{543} Trinder et al, above n 116.
\textsuperscript{544} Trinder et al, above n 116.
\textsuperscript{545} Ibid, 59.
\textsuperscript{546} Ibid, 59.
\textsuperscript{547} Such as Moorhead and Sefton, above n 40.
\textsuperscript{548} Maclean and Eekelaar, above n 483; Bevan, above n 145.
• When encouraged to settle by the judge the SRL may feel like they are being ganged-up on;
• Some SRLs may just walk away in the face of settlement negotiations because they feel overwhelmed by the process;
• Many SRLs are looking for the protection and neutrality of the judge. Many perceive that this is the promise of the justice system, that the weak will be able to enforce their rights against more powerful litigants, and to be encouraged to settle is confusing and threatening.549

Toy-Cronin argues that many of these reasons represent the tension arising from the projected accessibility of the court and protecting the scarce resource of hearing time in court.550 In essence, SRLs ‘lack strategic overview [which] means they do not know where a reasonable settlement lies, [they] can be difficult to communicate with, and … expect resolution by way of adjudication.’551 Other barriers to settlement for SRLs include:

• They have different financial incentives;
• They do not have their own lawyer to persuade them to settle;
• Lawyers use lawyer-lawyer negotiation techniques which do not work with SRLs;
• Lawyers avoid negotiating with SRLs to avoid the risks of doing so.552

Judges promote settlement because it is in the best interests of the parties and because it protects scarce court resources. But encouragement to settle may create tension between the judge and the SRL.553

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549 Toy-Cronin, above n 18, 164-173.
550 Ibid, 175.
551 Ibid, 175.
552 Ibid, 175-176.
553 Ibid, 179.
Part 3. Leading practices in SRL policy and programs in Australian courts and tribunals

Part 2 highlighted the complexity of providing SRLs with access to justice while at the same time ensuring the fair and effective administration of justice, which sometimes involves deploying strategies to deter SRLs. Toy-Cronin refers to this as ‘rationing access to justice’ and suggests that there will always be a gap between what the system promises and what it can deliver, but that the aim should be to ensure that decisions about rationing access to justice are principled to promote consistency and confidence.554 The research studies and government report canvassed in Part 2 of this report have made a range of recommendations about improving services and support for SRLs and the other justice system stakeholders they engage with.

Toy-Cronin’s study highlights that assisting SRLs is difficult for a number of reasons and these are not ameliorated by the responses and tools currently in use:

- The contradictions in the accessibility of the courts — courts cannot be open to everyone because they cannot meet the demand and their processes are too difficult. Providing SRLs with information about substantive law and procedure will not assist them with the more complex and necessary understanding of legal relevance, rules of evidence and complex court procedure that would enable them to litigate effectively and strategically;
- It is difficult to overcome the challenges that come with the role of SRL being both a party, witness and an advocate — they lack the emotional distance, they struggle to meet the tight trial timetables, they have difficulty accessing evidence;
- Lawyers provide a range of roles beyond expert legal assistance including broker, translator and negotiator; they help the SRL to see the weaknesses in their case.555

In the short term, Toy-Cronin suggests that measures that would assist (but will probably not be able to address these tensions completely without long term change) include:

- Expanding access to resources such as self-help information including flowcharts showing the process and what comes next and more comprehensive advice on running a proceeding;
- Expanding access to one-to-one advice, assistance in drafting documents, and sometimes, full representation;
- Education about the role of courts in society, their function, what they can deliver and their basic functioning. Information about the difficulties of self-representing would also assist;
- Guidelines for staff on what information they can and cannot give litigants;
- More nuanced training for judges in dealing with SRLs and more opportunities for dialogue about SRL management.556

Fundamentally, echoing calls by Macfarlane, Toy-Cronin argued that a cultural change is needed: there needs to be a move away from the stereotype of SRLs that is modelled on a minority of the worst.557

In responding to SRLs in Canada, Macfarlane outlined 10 Action Steps on the NSRLP website arising from the findings in her 2013 report:

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554 Ibid, 236.
556 Ibid, 239-250.
557 Ibid, 250.
Action 1: How We Think About Change

Facing the overwhelming case for systems change – recognizing and responding to the large and rising number of individuals who cannot afford legal counsel and are representing themselves in court – requires us to be open to re-thinking and re-working the way that legal and court services are conceived and offered to enhance Access to Justice.

Action 2: Listening to SRLs

SRLs are a majority in some courts now. They represent a cross section of the Canadian population, including men and women of all levels of education and income. The first-hand experiences of SRLs as they attempt to navigate the legal system are a vital part of planning for system change and SRLs can contribute much to both formal (e.g., working groups, policy bodies) and informal (e.g., professional conferences, classrooms) discussions about change.

Action 3: Making Private Legal Services Responsive to SRLs

The private Bar no longer serves the overwhelming majority of the population, whether individuals with limited means or those who are unwilling to expend very large amounts on legal services. The study data shows that at the same time many individuals both need and want access to legal services. To remedy this the legal profession must adapt its billing models, provide transparent information about costs, and consider sharing the marketplace with paralegals and others who can competently complete some legal tasks at a lower cost.

Action 4: Evolving New Models of Public Legal Services

Resource allocation for public dispute resolution must take account of both public needs and the impact of failing to meet those needs. The large and continuing rise in the number of SRLs requires a rigorous re-evaluation of the types of assistance that are presently publicly funded, and the examination of alternative and additional models including legal information services, paralegals, educational and therapeutic resources and logistical assistance, which can offer maximum value to SRLs.

Action 5: Enhancing Information Portals for SRLs

Increasing reliance on both print and web based self-help materials, including court forms, guides, and other information must reflect design principles and content development tailored to the needs of the SRL population. Both legal and educational material should be written in “real language” not legalese, and should be clear, consistent and accessible to a broad readership. Single portals are important in coordinating a plethora of resources that is often confusing to SRLs. A set of best practice standards emerges from the study data that can be used to both improve existing materials and to develop new models and resources.

Action 6: Enhancing Mediation and Dispute Resolution Services for SRLs

If SRLs are to resolve their cases before trial (as more than 90% of cases will do) they need assistance with third party mediation services as well as coaching to negotiate on their own behalf, often with a lawyer on the other side and sometimes in concert with a case manager or judge.

Action 7: Judges and SRLs

Judges are singularly impacted by the SRL phenomenon. Some are more open to the change in their courtroom role than others; some SRLs complain about being poorly treated by judicial officers. The influx of SRLs into the courts has implications for the criteria for judicial appointments, the form and content of judicial education (at (8)) and some procedural issues in the courtroom.

Action 8: Integrating New Knowledge into Legal Education and Training

There is an important role for law schools and other legal educators (including continuing legal education providers and judicial educators) in integrating new knowledge about SRLs and debating changes in traditional legal services in order to relate to and to serve SRLs.
Action 9: Measuring the Social Impact of Self-Representation

Social agencies are seeing increasing numbers of people who are representing themselves require both enhanced resources and research to identify how to support SRLs, who consistently describe stress-related illnesses and other negative social consequences of their experience. Further research is needed on the social impact of self-representation that will be critical to decision-making about the use and allocation of public resources to the justice system.

Action 10: Re-Building Public Trust

The study presents overwhelming evidence of a crisis of faith in the Canadian legal system that affects public perceptions of courts, lawyers and judges. Increasing direct contact between judges and unrepresented members of the public, and between SRLs and opposing counsel, is resulting in more complaints and growing public skepticism about the public accountability of both the legal profession and the judiciary.558

In Australia, Weybury has suggested that there are three ways to respond to SRLs including:

1. measures to provide self-represented litigants with representation;
2. measures to educate self-represented litigants to make it easier for them to navigate the system; and
3. measures to change the system to make it easier for litigants to proceed without representation.559

She recognises that the first category is the least realistic because legal aid budgets are unlikely to increase in the future and pro bono lawyers are unlikely to be able to meet the need of people who cannot afford legal representation.560 However, in some states SRLs may fare better with attaining pro bono representation where there is a stronger pro bono tradition, such as Victoria, than others. Most responses to date in Australian states have been focussed on the second category of educating self-represented litigants via written material, task assistance and online resources. As noted in part 2.2.2, Weybury advocated for a single gateway, early advice, triage and referral model for SRLs.561

The VAJR recommended that courts and tribunals do more to support SRLs and cope with the demands created by SRLs.562 It suggested the development of a comprehensive strategy to respond to SRLs including:

- training of judicial officers;
- training of court staff;
- active case management of self-represented litigants;
- access to mediation for self-represented litigants;
- appropriate use of technology to assist self-represented litigants;
- appropriate use of interpreters and spaces that are friendlier for culturally and linguistically diverse litigants; and
- better use of ‘support people’ to assist self-represented litigants.563

The practices used in various Australian states to respond to SRLs differ in whether they are aimed at assisting the SRL or the judicial officer and court staff, or at a higher level, changes to the legal system. The different responses fall into a number of categories:

- Self-help tools/guides/assistance for SRLs provided by courts/tribunals and other organisations;

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558 NSRLP, 10 Action Steps (6 May 2013) https://representingyourselfcanada.com/10-action-steps/
559 Weybury, above n 127, 155.
560 Ibid, above n 127, 155.
561 Ibid.
562 Victorian Government Department of Justice and Regulation, above n 103, 497.
563 Ibid, 497.
- Tools for judiciary and tribunal members and court staff when dealing with SRLs, including: benchbooks; manuals; online tools; training; court governance; court policies on responding to SRLs; LIP plans; data collection; court user satisfaction surveys; and practice notes;
- Systemic changes.

This section provides an overview and analysis of the leading practices in different courts and tribunals, and in legal aid and community legal centres in Australian states, discussing some of the evidence regarding the effectiveness of the different approaches.

### 3.1 Self-help resources for SRLs

As the LAW Survey highlights, SRLs seek advice and support from a range of legal and non-legal sources to prepare their case.\(^{564}\) SRLs vary as to how proactive, reactive or passive they may be in seeking this help.\(^{565}\) In Toy-Cronin’s study all SRLs were either proactive or reactive in seeking out support.\(^{566}\) Many were overwhelmed by the range of information available online and were not sure what was relevant or how to interpret it. Court websites were found to be unhelpful by a number of SRLs and it is likely that only a small number of SRLs will be able to use the online information successfully.\(^{567}\) Accessing information in libraries and copying documents can be costly and libraries may not have access to online subscription legal services.\(^{568}\) SRL networks are accessible via Facebook groups and on the internet generally, and many SRL access these for support and advice.\(^{569}\)

Macfarlane’s research indicates SRLs would like a variety of ‘non-legal’ services to assist them, including: early orientation and education about the legal system including the procedural and cultural aspects of courts (aside from legal training); different forms of education workshops to help prepare them for being an SRL; and practical tools and skills that can be applied in practice.\(^{570}\) Such early intervention may provide a reality check to some SRLs who do not know what to expect (and may rethink representing themselves) and may also save time and money in the court system.\(^{571}\) SRLs also expressed desire for one-on-one coaching assistance with tasks such as document review and answering questions, to enable them to run their own case but with some checks and moral support from the coach.\(^{572}\) Access to law libraries is particularly important for SRLs as is access to office facilities.\(^{573}\) Macfarlane made a series of recommendations regarding the revision of court forms, on-line resources, access to legal information, other support and resources for SRLs, educational workshops, coaching, mediation services, office services, mentoring and ‘friends’ of SRLs, and opening hours of courts.\(^{574}\)

The range of self-help approaches that have been adopted in courts and tribunals and other bodies discussed in this section include:

- Court and tribunals
  - Court and tribunal websites
  - Self-help videos
  - Handbooks

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564 Toy-Cronin, above n 18.
565 Ibid citing Trinder et al, above n 116.
566 Toy-Cronin, above n 18.
567 Trinder et al, above n 116.
568 Toy-Cronin, above n 18.
569 Ibid.
570 Macfarlane, above n 111,10.
571 Ibid.
572 Ibid, 10.
573 Ibid.
574 Ibid.
LEADING PRACTICES IN SRL POLICY AND PROGRAMS IN AUSTRALIAN COURTS AND TRIBUNALS

- Online court/tribunal services
- Education and workshops for SRLs
  - Court-based self-represented services
    - Outreach
    - Court-based volunteer services such as Court Network
    - Programs involving law students such as the VCAT/Monash Law Self Help Centre Pilot
    - Legal advice and pro bono schemes with legal aid commissions and community legal centres
  - Non-government organisation self-represented services (e.g. LawRight; Justice Connect)

Overviews of these services are also provided in the VAJR and Appendix E of Richardson, Sourdin and Wallace’s Final Report.

3.1.1 Court and tribunals

3.1.1.1 Court and tribunal websites

A number of courts and tribunals have designed their websites to be user-friendly for SRLs. Australian and New Zealand court and tribunal websites are reviewed in a table in Appendix A. All courts are reviewed, but those tribunals that did not contain any explicit reference to SRLs, or have not tailored their websites to SRLs were not included in the table.

Typically, many court websites are designed and provide information for legal practitioners (for example, providing links to practice directions, without extensive explanation) and tend to contain limited information, if any at all, that would be comprehensible to people representing themselves. However, there are a number of Australian court websites that have made concerted efforts recently to improve the information available to SRLs. Because tribunals are geared towards self-representation, tribunal webpages tend to be written for the SRL, they usually provide more information about process and the procedural steps involved in making an application in common types of tribunal matters. There are some good examples of tribunal websites that use plain language and are easily navigable. Others are dated and hard to navigate. More recently designed tribunal websites tend to be more user-centric and designed for the layperson.

Improving written information for court websites and written material for SRLs

While many tribunals in Australia, and some courts, have made a concerted effort to write in plain language, make information easily accessible, and improve readability, there are still a significant number of court and tribunal websites that SRLs would find difficult to navigate and understand. There is a need for those court and tribunal websites to improve access to justice by improving the legal information for SRLs.

Such improvements would fit well with the work that has already been done by organisations such as the Legal Information Access Centre, Legalpedia Queensland, LawAccess and Everyday-Law, whose websites provide the New South Wales and Victorian public with access to good quality, comprehensive online legal information. Everyday Law, published by the Victoria Law Foundation, is a website that provides easy to understand legal information and also provides referrals to free or low cost legal services. The website was awarded the ClearMark Award 2015 for excellence in communication from the Center for Plain Language in Washington, DC. Legal Aid Commissions also often provide online information for the public via their websites. Victoria Legal Aid for example has a section of its website dedicated to legal information entitled Find Legal Answers. In Queensland, the Legalpedia website provides a wide range of guides regarding the law and going to court. Many of these websites provide
legal information but also guides to representing yourself. There is potential for courts and tribunals to partner with such organisations to improve the quality of information provided on their websites.

There is a wealth of existing resources that courts and tribunals can use to improve the legal information or procedural guidance they provide. The Law and Justice Foundation of NSW has a range of resources on its webpage on Plain Language Law, which would be of use to courts and tribunals. The Victorian Law Foundation has also produced the Better Information Handbook on plain language principles, writing, presentation and design of legal information. There are a number of free tools online that can assist courts and other organisations in assessing the readability of their legal information, including built-in tools within common word processing software programs such as Microsoft Office.

The Maryland Courts in the United States has written a guide entitled “Writing for Self-Represented Litigants: A guide for Maryland’s courts and civil legal services providers” which suggests the following basic rules:

1. Write clearly.
2. Check your document with a readability tool.
3. Improve readability with layout.
4. Explain information with a visual aid.
5. Accommodate people’s differences.
6. Tell readers where they can find more help.

The review of Australian and New Zealand court and tribunal websites undertaken as part of this Environmental Scan indicates is that many websites do not meet these basic rules, as:

- information is not always easy to find or logically placed within the website;
- legal terminology is often used without defining such terms;
- the text is densely spaced and difficult to read; and
- visual aids (such as diagrams, flowcharts and images) are underutilised.

User-centred legal design (that is, applying design thinking principles to the law and legal systems) is becoming an increasingly popular and influential approach for informing the development of court websites, legal forms and other information about legal services and the law. Leading universities in the United States have established legal design labs, though Australian universities have not yet followed suit. Good examples include the Legal Design Lab initiative of the Stanford Law School and d.school, led by legal and design academic Margaret Hagan, and NuLawLab at the Northeastern University School of Law. In addition to creating the Access & Court Innovations site (a clearinghouse of projects, ideas and research for making a user-centred legal system), the Legal Design Lab has created:

- Court Visual Guides;
- Navocado (interactive, user-friendly guides and tools to help navigate the legal system);
- Court Messaging Project (Wise Messenger) (which enables courts to send automated messages to litigants or clients to collect intake information, send event reminders and provide coaching in procedural steps and document assembly); and
- the Legal Design Toolbox (a set of resources to help tackle legal challenges with design and to communicate more visually).
Beyond plain language and user design, effective communication and developing digital legal information for SRLs and the general public should also be informed by various areas of linguistics including cognitive linguistics and forensic linguistics.\(^{575}\)

While the research does not yet show how effective legal information is and whether more legal information is really useful, courts and tribunals ideally should engage with emerging research to identify evidence-based approaches to communication and providing legal information. It is likely that legal information and written procedural advice will be most useful and effective when it is combined with one-on-one self-help and assistance.\(^{576}\)

Some Australian courts and tribunals are beginning to incorporate design thinking in their efforts to improve the way they respond to SRLs, particularly in connection with digital services. Examples of improved website design and resource provision include:

**Fair Work Commission:** The [Fair Work Commission](https://www.fairwork.gov.au) has had a focus on increasing access to justice in recent years and has a strategic program of innovation targeting SRLs under the Future Directions change program that commenced in 2012 and finished in 2017. The work completed under the program is reviewed in the Fair Work Commission [Annual Report 2016-2017](https://www.fairwork.gov.au/publications/annual-reports). The Fair Work Commission website is an example of a user-centric website. It provides access to a wide range of information for SRLs including fact sheets, forms, guides, videos, webpages and quizzes to assess eligibility to make an application. The website also contains a range of Bench Books on bullying, enterprise agreements, general protections, industrial action and unfair dismissals. The Unfair Dismissals [Benchbook](https://www.fairwork.gov.au/about-us/what-we-do/what-we-do-around-law-and-legislation/benchbooks) in PDF and online format are provided to assist parties in Unfair Dismissal cases.

**Queensland and Civil Administrative Tribunal:** A dedicated area of the QCAT website deals with ‘Going to the Tribunal’ and explains accessing the tribunal; appearances and representation; accessing legal advice; and types of proceedings. Information is provided in response to a list of questions that SRLs may have, such as how to address the QCAT member. In addition, the QCAT website uses the [BrowseAloud](https://www.qcat.qld.gov.au/our-services/supporting-self-represented-litigants) web tool which assists people with visual impairment and limited reading and English language skills, by translating webpage text into 99 different languages, speech translation into 40 different languages, and text magnification, among other functions.

**Supreme Court of Victoria:** The website of the [Supreme Court of Victoria](https://www.scv.vic.gov.au) has a section entitled ‘Representing Yourself’ which is written clearly, is easily navigable and uses plain language. The website provides links to a range of legal assistance and information providers including the Law Institute of Victoria, Victoria Legal Aid, Community legal centres, Justice Connect and Everyday-law.

**County Court of Victoria:** The County Court of Victoria re-launched its website in 2018 to provide a wider range of [information for SRLs](https://www.court.vic.gov.au) than was previously provided to SRLs and do so in a way that is user-friendly and easily navigable.

**Court of Appeal of Queensland:** The [Court of Appeal of Queensland](https://www.court.qld.gov.au) has recently revised its website, information sheets and guidelines for SRLs in an attempt to improve their experience with the Court.\(^{577}\) The website uses plain language and is easily navigable.

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\(^{577}\) Justice Margaret McMurdo, ‘The self-represented litigant in the Court of Appeal, Supreme Court of Queensland (2014) 24 Journal of Judicial Administration 13.'
High Court of New Zealand: The High Court of New Zealand website provides detailed information for SRLs under its ‘Going to court without a lawyer’ page.

It is worth pointing out that while these websites reflect better practice in style and accessibility, they do not necessarily incorporate visual elements of design-based thinking. For instance, many still use long-form text. Accordingly, there is room for further improvement.

Visual aids - Self-help videos

A number of courts and tribunals have created self-help videos to assist SRLs. A full description of these can be found in Appendix A, but some examples include:

- The Fair Work Commission provides a wide range of videos to assist SRLs and other parties housed on its Youtube channel. For example, the video Representing yourself at a determinative conference or hearing.
- The County Court of Victoria has created an 8-minute video for SRLs to explain the civil process. It explains what the civil process is, the implications of starting a legal process and that the process is open to the public. The video explains:
  - benefits and risks of representing yourself;
  - the civil process, and cross references the written Guide;
  - the need for the SRL to read the Civil Procedure Act 2010 and the County Court Rules (as these set out the procedure and forms);
  - starting a civil proceeding, and key documents;
  - first contact with Registry staff and what the Registry staff can and cannot do;
  - settling cases;
  - requirement to appear in court;
  - judgment;
  - location and contact details.
- Victorian Civil and Administrative Tribunal provides an animated video that explains the role of VCAT;
- The Accident Compensation Conciliation Service of Victoria website also contains a high quality video using actors that explains the process and hearings in a clear and accessible manner.
- The New South Wales Civil and Administrative Tribunal website provides a range of videos on tenancy, guardianship, home building and review of administrative decisions which can be viewed in different languages.
- The Administrative Appeals Tribunal website contains several video guides that explain what the AAT does and processes.

Handbooks

In terms of written material, the County Court of Victoria has published a handbook for SRLs which is cross-referenced in the video described above. The Supreme Court of Victoria website has one of the more comprehensive resources providing information and assistance to SRLs by way of guidelines and written information. The Supreme Court of Victoria has created self-help information packs for SRLs on five different topics including:

- Appeal from a Supreme Court Associate Justice - Self-help information pack
- Civil appeal from the Magistrates' Court - Self-help information pack
- Commencing and defending a writ or originating motion - Self-help information pack
- Judicial review - Self-help information pack
- VCAT appeals - Self-help information pack
Other good examples of written guides include:

- The Mental Health Tribunal of Victoria, which is provided on the website under ‘What to expect at my tribunal hearing’.
- The Planning and Environment Court of Queensland links to a handbook created by the Environmental Defenders Office entitled the Community Litigants Handbook.
- The Magistrates Court of Western Australia contains a wide number of fact sheets for SRLs in its Civil Matters webpage.

In the UK, A Handbook for Litigants in Person (2012) has been created by Courts and Tribunals Judiciary UK. However, this handbook, while comprehensive, may be difficult for difficult SRLs to understand due to its complexity. Some attempt has been made to write in plain language but the text is densely spaced, does not use visual aids, and uses technical language (though the Handbook also contains a glossary of terms).

**Online services**

A number of court and tribunal websites have recently introduced online services including online application forms and e-filing of documents. For example, QCAT provides numerous services online such as applications for and responding to minor debt disputes, changing contact details, lodging a notice to withdraw an application, applying to attend QCAT by phone, applying for permission to be represented, searching and copying QCAT documents, applying for an adjustment of a time limit or to have a procedural requirement waived, and requests for reasons for a QCAT decision. The Commonwealth Courts in Australia provide a range of online services including Live Chat, eLodgment, commonwealth courts portal, online payments, proof of divorce, and LawTermFinder.

### 3.1.1.2 Court-based services for self-represented litigants

**SRL coordinators**

In the Supreme Court of Victoria, a Self-Represented Litigant Coordinator assists SRLs with:

- procedural and practical advice;
- information about alternative methods of resolving a dispute;
- referrals to organisations that provide free or low cost legal services; and
- self-help packs on various types of proceedings.

The County Court of Victoria has recently expanded its SRL co-ordinator service to two personnel and this service is currently examining which innovative processes can be used to assist SRLs. Toy-Cronin has noted that in some settings these roles can perform a gatekeeping function for the court and may be designed to keep SRLs out of the system. These services have not been independently evaluated. In addition, in the Supreme and County Courts of Victoria, a pilot SRL self-help service is due to be established by Justice Connect in 2019. In the Supreme Court, the number of contacts with the Self-Represented Litigants Coordinator is reported in the Annual Report, but these cover both civil and criminal matters. In the 2016-17 Annual Report, it was reported that 2,766 individual contacts were made with the service by phone, email and in person, which resulted in 25 referrals to the Duty Barrister Scheme of the Victorian Bar.

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578 Victorian Government Department of Justice and Regulation, above n 103, 491.
579 Toy-Cronin, above n 18.
In 2016 the Children’s Court of Victoria introduced Court Advice and Support Officers to assist young people and their families to navigate the court and understand processes in child protection matters. These officers can help by:

- liaising with lawyers from the Child Protection Litigation Office or Victoria Legal Aid;
- expediting matters at the registry;
- explaining the process and procedures of the court;
- managing expectations and providing support;
- attending the hearing with the self-represented litigant; and
- making referrals to other support services.  

Outreach

A different approach taken in the Administrative Appeals Tribunal (AAT) at the federal level is the provision of outreach for SRLs. Because the AAT is geared towards self-representation, there is no specific self-representation service; rather, registry staff provide information about the review process to all enquiries. Where the person is self-represented, AAT registry staff proactively provide outreach by contacting the person in certain types of cases to explain the review process, to ask whether an interpreter or other assistance due to a disability is required, and to provide information about where the person can access legal advice.  

The process followed by AAT staff includes the following:

The AAT is very conscious of the need to assist parties who are representing themselves to participate as fully as possible in the review process. Various steps are taken during the review process to this end. The first steps are taken shortly after an application is lodged.

The letter to an applicant acknowledging receipt of an application sets out basic information in relation to what will happen next in the review. It is accompanied by a plain English brochure relating to the first stage of the review process. Within the next few weeks, an AAT staff member contacts a self-represented party to provide information about the AAT and its processes. This is known as Outreach. Where necessary, an interpreter service is used.

The officer conducting Outreach explains what the s 37 documents are, what will happen next and other procedural matters, such as how to make an application to stay the decision under review. The AAT can arrange to send the person a DVD about the AAT and its procedures. Outreach provides the officer with the opportunity to identify whether the person may need the assistance of an interpreter when dealing with the AAT or whether the person has any particular needs because of a disability. The person is also referred to other organisations that may be able to assist the applicant.

Other innovations and pilot programs

The provision of support services for court users is also available in a number of courts. An example of this is Court Network, an independent service based at Australian courts and tribunals staffed by volunteers to assist SRLs and other court and tribunal users to navigate courts and tribunals. As the VAJR notes, Court Network volunteers ‘can help arrange interpreters, explain processes, and even attend court as a support person.’  

Australian courts and tribunals have also introduced a range of different pilot programs aimed at assisting SRLs. These include:

- In the Federal Circuit Court of Australia’s Melbourne registry, a pilot financial counselling service for self-represented debtors created in 2014 provided onsite

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581 Victorian Government Department of Justice and Regulation, above n 103, 479.
584 Victorian Government Department of Justice and Regulation, above n 103, 478.
Leads at the court two mornings per week. The aim of the service was to help SRLs better understand the nature of bankruptcy proceedings to enable them to determine their rights and make effective decisions regarding their case and increase efficiency and resolution of bankruptcy cases. An evaluation of the service found that it had been successful in meeting those aims: the project helped several debtors prove solvency and avoid bankruptcy, reduced delay and provided a more streamlined process, among other positive outcomes. The financial counselling service also worked with the JusticeConnect Self-Representation Service when SRLs needed legal advice.

- **VCAT Self-Help Centre** was a pilot program that operated in VCAT in 2015/2016 involving Monash University law students offering on-the-spot support to self-represented litigants. This pilot program was described in the VAJR in the following way:

  Students assisted self-represented litigants with various tasks, such as completing application forms, obtaining business register searches, understanding a proceeding or a VCAT order, or referral to other appropriate support services. The Self Help Centre produced a range of fact sheets, which cover topics such as:
  - what will happen during a hearing, where to sit, what to call the member;
  - applying for a review if a party missed their hearing;
  - how a tenant can stop an eviction until a review hearing is held;
  - applying for leave to apply for a second review if a party missed their review hearing;
  - how to apply to the Residential Tenancies Bond Authority for a bond after a VCAT order;
  - enforcing a monetary order; and
  - how to appeal a VCAT decision.

  The Self Help Centre pilot recognises that in a tribunal such as VCAT, self-representation is not suitable for everyone, and that some people are not able to progress their matter without the benefit of one-on-one assistance to better understand VCAT practices and procedures.

- **The Fair Work Commission** has run pilot programs targeting SRLs. It created an Unfair Dismissal Pro Bono Pilot Program to facilitate pro-bono legal advice and representation to unrepresented parties in 2013. The FWC’s website states that ‘on 1 July 2014 the scheme to provide unrepresented parties with free legal advice in relation to unfair dismissal jurisdiction hearings recommenced as a permanent initiative of the Commission.’ The pro-bono program was reviewed by the Centre for Innovative Justice at RMIT and the review found that applicants, respondents and Commission members alike viewed the program as successful, and that it had improved the capacity of parties to argue their cases. The FWC also created a general protections assistance for self-represented parties pilot. That project referred certain SRLs to the Employment Law Centre of Western Australia for advice. The CIJ’s review of this pilot after 10 months found that applicants who had received advice or assistance were more likely to resolve their matters than other SRLs and were less likely to have their matters dismissed.

- **The County Court of Victoria** reported in its 2014-2015 Annual Report that it was investigating a pro-bono scheme that would provide advice and assistance for SRLs in civil cases.

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586 Ibid.
587 Ibid.
588 Victorian Government Department of Justice and Regulation, above n 103, 489.
The AAT in several state registries (New South Wales, Queensland, South Australia, Victoria and Western Australia) has established legal advice schemes with legal aid commissions and community legal centres. This involves a solicitor attending the AAT and providing advice and minor assistance to self-represented parties in some cases, such as reviews of Centrelink decisions. Representation may also be provided if a person meets eligibility requirements.

### 3.1.2 Community-based SRL services

Grainger, in her review of SRL services in the United States, New Zealand and the United Kingdom, found that organisations assisting SRLs fell into three categories:

1. Organisations that focus on prevention and early intervention strategies designed to divert people from the legal system. See for example the work of LawWorks, Law for Life and the Islington Citizens Advice Bureau.

2. Organisations that focus on providing litigants in person with quality information, advice and other tools designed to help them represent themselves in courts and tribunals. See for example the work of the New York State Courts Access to Justice Program, LawHelp New York, the Family Court Self Help Centre, the National Centre for State Courts, the Royal Courts of Justice Citizens Advice Bureau and the Judicial Working Group on Litigants in Person.

3. Organisations that focus on providing free legal advice and representation to individuals who cannot represent themselves, cannot afford to pay for it and who are unable to access legal aid. See for example the work of the Bar Pro Bono Unit and LawWorks.

A number of these organisations have services based at courts, but they are operated by community agencies. In the United States, court-based self-help services are very common. Self-help services for people who cannot afford legal representation are not a new development. Giddings and Robertson conducted research on the self-help legal service phenomenon in legal aid commissions and community legal centres in Australia in the early 2000s. By their definition, a self-help legal service is a ‘legal service that involves the consumer taking personal responsibility for completing all or part of the relevant legal transaction’, and may be known by such names as ‘do-it-yourself, unbundled legal services, discrete task representation, and alternatives to full-time representation’. They observed that as legal aid funding reduced, the types of services offered by legal aid commissions and community legal centres changed towards a stronger focus on providing legal information by way of ‘self-help kits, web-based information and telephone services.’ Giddings and Robertson argued that the idea that the consumer of the legal service was being empowered through self-help was a hollow one if the self-help service is not well matched to them or is provided without expert support.

The need for more extensive provision of legal assistance services to benefit to SRLs was a common refrain in the recent access to justice reviews. The Productivity Commission suggested that there is scope to improve the delivery of legal assistance services through an overarching vision reflected in eligibility principles and a systematic approach to allocating funding, for example which may reduce numbers of SRLs and improve access to justice. The VAJR recommended that a Self-Representation Service modelled on the Queensland

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592 Grainger, above n 349, 11.
594 Giddings and Robertson, ibid ‘Large-Scale Map’, 103; Giddings and Robertson, ibid, ‘Informed litigants’.
595 Giddings and Robertson, ibid, ‘Informed litigants’, 189.
596 Giddings and Robertson, above n 594, ‘Large-Scale Map’.
597 Productivity Commission, above n 31, 27.
LawRight service to provide unbundled legal services such as legal advice, task assistance for meritorious claims and assisting others to settle or withdraw claims, be established for all Victorian courts (except the Magistrates’ Court of Victoria where a duty lawyer service is most appropriate) and VCAT.598

In Australia non-government organisations such as LawRight, Justice Connect and JusticeNet SA will sometimes have self-represented services operating at court registries. The longest standing service for self-represented litigants in Australia is the Self Representation Service operated by LawRight (formerly known as the Queensland Public Interest Law Clearing House Incorporated (QPILCH)), which has existed since 2007. It provides advice and task assistance to SRLs in the civil jurisdiction of the Queensland Supreme and District Courts, the Federal Court, the Federal Circuit Court of Australia, and the Queensland Civil and Administrative Tribunal (QCAT). It does not assist in family law, criminal law or native title matters, complex commercial or building disputes or for clients who can afford legal representation, or who are eligible for legal aid or to obtain ‘no win, no fee’ assistance. SRLs can receive one hour appointments with a LawRight lawyer to assist with:

- whether, and how, to commence or defend proceedings;
- court and tribunal processes;
- drafting documents such as applications, statements of claim, defences, affidavits, submissions and court and tribunal forms;
- preparing for trial and appearing in court;
- appealing court and tribunal decisions;
- referral for pro bono mediation; and
- other options for the resolution of disputes.

Twenty seven per cent of applicants to the Self Representation Service come to the service for the first time before commencing proceedings, another 20 per cent after judgment and the remaining 53 per cent come while the proceedings are on foot at different interlocutory steps.599 The types of tasks that are performed in appointments include (from most to least prevalent):

- preliminary advice about commencing court proceedings
- advice about alternative options to resolve the dispute
- responding to a summary judgment application
- drafting an application and affidavit
- post-judgment steps or enforcement
- advice ahead of specific hearing
- trial preparation
- drafting a notice of appeal
- basic advice about appeal procedures
- amending a defective pleading
- disclosure
- letters to the other party about non-compliance
- drafting a statement of claim
- drafting a defence
- drafting an outline of argument
- assistance preparing for mediation
- drafting an application for stay and appeal documents; and
- drafting a client statement or affidavit.

598 Victorian Government Department of Justice and Regulation, above n 103, 470.
The QPILCH Self Representation Service has been the subject of evaluation and these findings are discussed in Part 3.4.

Another similar option to the self-represented service advocated by Macfarlane is the concept of ‘legal coaching’, an expression developed by the NSRLP, which involves ‘the type of assistance that requires a client to do much of their own work, while the lawyer provides “coaching” — guidance, information, strategic counsel, feedback and review.’ The NSRLP website states:

Both unbundling and coaching provide clients with an opportunity to choose from an à la carte menu of legal services. However, coaching offers those who are primarily self-representing some very practical advantages that SRLs tell us they want:

1. Coaching assumes an ongoing relationship between the lawyer and client. The legal coach provides more than one-off assistance with discrete tasks, and instead offers ongoing guidance and mentorship throughout the case.

2. Unlike the unbundling lawyer, the legal coach won’t necessarily take charge of every discrete task on her own. The legal coach and the client will roll up their sleeves together, reducing costs even further while at the same time building the client’s capacity to take the next step. By working hand in hand with the lawyer on her case, the client will be better positioned to understand the theory of her case and how to achieve the outcome she’s looking for. Coaching tasks will vary depending on the needs of the client, the client’s capacity to take on different pieces of the work, and/or the budget available. On any one case a coach might offer advice, draft parts of a document, review the client’s work and offer feedback, or even appear in court.

3. Coaching is a partnership, allowing the lawyer and client to work as a team. The legal coach will be called upon to train, guide and mentor the client, without losing sight of the client’s own expertise. The goal of the legal coach is to maximize the client’s potential to take the next step by themselves. Successful legal coaches will be skilled in building trusting relationships with clients, flexible in adapting to different clients’ levels of ability and need, and prepared to modify the scope of the retainer as the case unfolds.\(^{600}\)

The NSRLP includes details of lawyers and paralegals who provide legal coaching services (and unbundled legal services) to clients in their National Directory of Professionals.

### 3.2 Tools for judges, tribunal members and court and tribunal staff

This section discusses the different approaches that have been taken in various courts and tribunals to assist judges, tribunal members and court and tribunal staff when dealing with SRLs. Many courts have SRL Working Groups (such as the Unrepresented Litigants Working Group in the Family Court of Australia) that work to simplify court forms and develop initiatives to assist SRLs.\(^{601}\)

Macfarlane made several recommendations with respect to the judiciary such as judicial education in dealing with SRLs, judicial appointments to take into account the willingness to work with SRLs (particularly in the Family Court), codes of conduct for judicial management of SRLs, single judge case management, the development of special SRL courts, and the management of complaints against judges. Many Australian jurisdictions have Bench Books with chapters on dealing with SRLs. Examples include the NSW Judicial Commission Equality Before the Law Bench Book and the COAT Practice Manual for Tribunals 4th Ed (2017). In the United States, the California Courts created a bench guide for Handling Cases Involving Self-Represented Litigants which included sample scripts for judges when communicating with SRLs.

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Tools and programs for judges and court staff in Australia include:

Victoria:

- The Judicial College of Victoria has provided a training program to assist judicial officers in learning to deal effectively with SRLs. Information technology initiatives also seek to improve processes for dealing with SRLs within court
- A Self Represented Litigant (SRL) IT initiative launched in June 2016 allows Court staff to access a comprehensive overview of a litigant’s case in the one place, enabling them to provide quick and accurate assistance to SRLs. A key design feature of the new system is access and production of meaningful data to assist in the management of the access to justice needs of SRLs within the Commercial Division and Common Law Division602
- County Court of Victoria – Practice Note Common Law Division 5/2016

New South Wales:

- Equality Before the Law bench book – self-represented parties (ch 10)
- Civil Trials Bench Book – Unrepresented litigants and lay advisers

Queensland:

- Supreme (and District) Court Bench Book – (ch 5 unrepresented defendant)
- Supreme Court – Case management of SRL cases under the SRL supervised case list (civil) Practice Direction No 10/2014 Supreme Court of Queensland
- Equal Treatment Bench Book Ch 12 SRLs

Tasmania:

- Magistrates Court of Tasmania Practice Direction 3 of 2004 – consent orders under the Relationships Act 2003 – consent orders made on the papers only where all parties legally rep. All unrep parties must attend court to inform the magistrate whether they consider the consent orders to be fair. If not all unrep parties attend court, no consent orders made
- Supreme Court of Tasmania Practice direction 5/2006 – consent orders under Relationships act and Testator’s Family Maintenance Act – consent orders only made on the papers where all parties legally rep. unrep parties p=must attend court to agree to consent orders or they will not be made.

Western Australia:

- Equal Justice Bench Book – Ch 8

Case management practices also have an important role to play. Studies suggest that SRLs find the lack of continuity of judges throughout their cases frustrating and more likely to lead to inconsistencies, but were very satisfied when they experienced single-judge case management.603 Case management was recommended by the Productivity Commission in its review of access to justice arrangements.604 Both the County Court of Victoria and the Supreme Court of Queensland us a case management approach tailored to SRLs:

- **County Court of Victoria:** All SRLs in the County Court of Victoria involved in civil common law matters are subject to intensive case management under a Practice Note

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602 County Court of Victoria, *Annual Report 2015-2016* (County Court of Victoria) 49.
603 Macfarlane, above n 111.
604 Productivity Commission, above n 31, 506.
Another approach in the County Court of Victoria in commercial matters (where SRLs are more likely to be respondents) is to refer the matter to mediation before a judicial registrar rather than a private mediator that an SRL might be able to afford. 606

- **Supreme Court of Queensland**: A case management list, known as the Supervised Cases List, is used in the Supreme Court of Queensland in the Brisbane Registry for all matters involving SRLs. 607 Practice Direction of 2014/10 has been developed for such cases and uses modified procedures. McCowie has commented that the Practice Direction, developed in consultation with QPILCH (now LawRight), provides a flexible framework for the court to determine the level of case management required depending on the case. 608

In the United Kingdom, the **Judicial College** has developed online modules using videos that address how judges might better assist SRLs. Judges can access these resources through the Judicial College’s intranet. Hunter and Trinder are currently studying how civil judges deal with SRLs including focus groups of judges reviewing the video resources. 609 To date, Hunter and Trinder’s study has revealed that there is a divergence of opinion among judges as to whether the legal system should adapt to SRLs or whether SRLs should adapt to the system. 610 The judges placed emphasis on procedural justice but how this manifests is highly variable, as is the approach among judges generally to assisting SRLs. 611 The aim of the study is to map and categorise the approaches to judgecraft in relation to SRLs and explore the concept of procedural justice in civil proceedings where lawyers are not involved.

### 3.3 Systemic changes

This section briefly reviews approaches taken in some jurisdictions that involve systemic (and often legislative) change to the legal system to improve access to justice for SRLs. The Productivity Commission noted that with respect to assisting the ‘missing middle’, options include unbundling legal services, limited licenses for non-lawyers to provide legal advice, private or third party funding arrangements, legal expenses insurance, and government loans. 612 Toy-Cronin has also noted that another approach is to reform procedural rules and roles of judges and court staff to make courts more accessible to SRLs. 613 This might involve the judge playing a more active or inquisitorial role. 614

Three areas that have received consideration overseas and in Australia include:

#### Lay advocates and McKenzie friends

A McKenzie friend is described as ‘any person, whether he be a professional [person] or not, [who] may attend as a friend of either party, may take notes, may quietly make suggestions, and give advice.’ 615 While courts have accepted that SRLs may use a McKenzie friend, there are limitations on what they may do and they must not be disruptive or delay proceedings. 616

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605 County Court of Victoria, *Practice Note PNCLD 5-2016: Common Law Division Self Represented Litigation* (2016 updated 10 August 2018).
606 Victorian Government Department of Justice and Regulation, above n 103, 481; McCowie, above n 599.
607 Victorian Government Department of Justice and Regulation, ibid, 480.
608 McCowie, above n 599.
610 Ibid.
611 Ibid.
613 Toy-Cronin, above n 18, 40.
614 Ibid.
616 *Re B* [1982] 2 NSWLR 372.
Macfarlane’s study found that 37 per cent of SRLs regularly took a support person such as a friend, family member or a support group member, with them to court. A support person can be helpful in figuring out forms, keeping the SRL calm and focussed, and assisting with language. Some SRLs said that they brought their support person to act as a McKenzie friend but the role and concept of such a person was not generally well understood.

Weybury found that not all judges were supportive of using McKenzie friends due to suspicions about their motives and whether they were more of a hindrance than a help to the court. Judges differed in what they would permit a McKenzie friend to do in court: some only allowed them to take notes and give advice, whereas others permitted the McKenzie friend to act as a lay advocate and address the court. The VAJR noted that there is an argument that legal recognition should be given to support persons for people with a disability. Support people are recognised in s 63 of the Victorian Civil and Administrative Tribunal Act but this could be more explicitly stated. The VAJR recommended that all courts consider a similar approach to recognising support persons.

There has been debate in recent years in several jurisdictions, including Australia, about whether it is permissible for McKenzie friends (or indeed any other friend) to charge for assisting SRLs, particularly when the work may constitute legal work. This leads to further debates about regulating McKenzie friends and deregulation of the legal profession to enable non-lawyers and paralegals to do more work than they are currently permitted to do. Further, controversy remains about whether there is a need to regulate to control the quality of non-lawyer SRL services.

Unbundled legal services

The research studies discussed in Part 2 highlighted that SRLs often struggle to find a lawyer to help them with discrete task assistance in their cases. On the rare occasion that SRLs were successful in obtaining unbundled legal services, it tended to be with the lawyer who had represented them previously. Unbundled legal services, or limited scope retainer agreements as they are known in Canada, are not generally popular with lawyers who worry about their professional liability, but they can be an important means of addressing unmet legal need. The NSRLP has created a database of lawyers who provide unbundled legal services and a resource for SRLs on unbundling. The NSRLP describes unbundling as follows:
The idea of “unbundling” one’s services is a more visual way of conveying the same meaning – if full representation is a “complete bundle” or package of legal services, then “unbundling” extracts one of more of those services and offers them separately.

Some jurisdictions may permit different forms of help, other than lawyers. In Ontario, Canada, under the oversight of the Law Society, licensed paralegals are permitted to work on small claims, traffic and tribunal work, and some provincial offences, including acting as an advocate in court or a tribunal. Lawyers may not be supportive of the use of paralegals, especially in family law cases.

Castles has advocated for increased use of unbundled legal services in Australia. She suggests that the case law and professional standards governing lawyers do not prevent the provision of unbundled services and argues that there is a need for formalise their use to better assist SRLs. She notes that unbundled legal services are commonplace in Canada and the United States and argues:

Unbundling is an important strategy for ensuring justice access for litigants. It offers valuable assistance to the courts faced with the difficult job of managing self-represented parties. It has the potential to provide lawyers with a sustainable “market share” – providing specialised legal support where it is needed but not pricing lawyers out of the market by demanding that they undertake every step in the process.

Castles notes that unbundling is not a replacement for full legal representation but a helpful halfway measure to better meet the needs of SRLs who cannot afford legal representation. Although there are a number of barriers to unbundling, namely that most court rules, legal ethics and professional conduct rules and legal practice models are generally based on the assumption that lawyers will conduct litigation from start to finish, she suggests none of these are insurmountable. As Castles highlights, community legal centres and legal aid organisations have provided unbundled legal services for years. Still, the nascent nature of unbundling in Australia means there is limited evidence of the impact of these services for SRLs and further research is required in this regard.

Alternative dispute resolution

There can be a tendency for judges and lawyers to assume that alternative dispute resolution (‘dispute resolution’), such as mediation, is not appropriate where SRLs are involved due to the fact that they may be disadvantaged in negotiation and may have difficulty understanding the terms of settlement. In Macfarlane’s study just over a quarter of SRLs had considered alternatives to litigation such as mediation, private arbitration, and meetings with the opponent aimed at resolving the dispute. Service providers and court staff often do not ask SRLs about attempts they have made to resolve the dispute before coming to court and there is a strong perception that SRLs do very little to resolve a dispute before coming to court. In addition, during proceedings, a significant number of SRLs said that they were never offered

630 Ibid.
631 Bertrand et al, above n 452.
632 Castles, above n 364.
633 Ibid, 238.
634 Ibid.
635 Ibid, 240.
636 Ibid.
638 Victorian Government Department of Justice and Regulation, above n 103.
639 Macfarlane, above n 111.
640 Ibid.
mediation and did not know what it was. It may be the case, therefore, that perceptions about SRLs and dispute resolution are wrong. McFarlane notes that an SRL may be keen to resolve their dispute but be unable to get the other party to agree to participate in mediation. The experiences of SRLs with mediation are mixed. It can be costly, and it may be frustrating. But many SRLs are of the view that even if mediation does not resolve the dispute, it should be tried. One option that may assist SRLs is for courts to refer matters to mediation before a judicial officer rather than private mediation. It would appear that the use of mediation in SRL matters is increasing in Canada. In an update of data on SRLs, Macfarlane and colleagues found in 2015-2016 that 32 per cent of SRLs were offered mediation and 32 per cent said they used mediation, though these were not necessarily the same SRLs.

In the Australian context, there is limited information about the use of ADR mechanisms in matters involving SRLs. The VAJR noted that courts do not always avail SRLs of the opportunity to go to mediation, which may be the result of a perception that SRLs may be disadvantaged in mediation without representation in not being able to understand the terms of settlement. Still, a number of Australian forums have implemented ADR initiatives that apply to or are tailored for SRLs. QCAT uses dispute resolution such as mediation and compulsory conferences, which explanations on the website about these processes and fact sheets. In the 2015-2016 Annual Report it was noted that QCAT was trialling eMediations using Skype technology to increase access to mediation and compulsory conferences. In the County Court of Victoria, Judicial Registrars conduct dispute resolution, in appropriate matters involving SRLs. In the County Court of Victoria’s video ‘Year of Achievement’ Judge Paul Cosgrave, head of the Commercial Division, says it has ‘proved popular with practitioners, especially in cases involving SRLs and persons of limited means.’ The 2015-2016 Annual Report notes that these mediations ‘provide self-represented litigants with a less formal and intimidating mechanism for resolving a dispute, whilst still providing them their ‘day in court’ and the opportunity to tell their story in front of a judicial officer.’

### 3.4 Evidence of the effectiveness of responses to SRLs

The information about what works with SRLs is emerging. In a review of the largely North American evidence of the responses that assist SRLs, Williams suggested that while there are high levels of user satisfaction there is little evidence that interventions by judges, courts and self-help programs have a positive impact on outcomes. The consistent message from the research, including the recent studies by Toy-Cronin and Macfarlane, is that courts and other justice agencies require a range of SRL supports and resources to enable them to flexibly respond to the individual needs of each litigant. There is an extensive body of research, too large to recount in detail here, on self-help, legal assistance, community legal education and

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641 Ibid.
642 Ibid.
643 Victorian Government Department of Justice and Regulation, above n 103, 498.
644 Macfarlane, above n 111.
645 Ibid.
646 Victorian Government Department of Justice and Regulation, above n 103, 498.
647 Julie Macfarlane, Gurleen Gill and Piper Riley Thompson, Tracking the continuing trends of the self-represented litigants phenomenon: Data from the National Self-Represented Litigants Project 2015-2016 (Canada, 2016).
648 Victorian Government Department of Justice and Regulation, above n 103, 490.
649 County Court of Victoria, Annual Report 2015-2016 (County Court of Victoria) 45.
legal service provision that ideally should inform the development of responses by courts and tribunals to SRLs.

Earlier work, for example, by Giddings and Robertson, highlights that self-help resources can assist SRLs but the effect will depend on how well the services are matched to the practical needs of users.651 This assessment is echoed by Forell and McDonald, who argue that services to address legal need and improve access to justice should be:

- targeted, particularly to reach those with the highest legal need and lowest capability;
- joined-up with other services, to address complex problems;
- timely, to minimise the impact of problems and maximise the utility of services; and
- appropriate to the needs and capabilities of users.652

The vast body of research on community legal education and legal assistance in Australia produced by the Law and Justice Foundation NSW653 should inform the responses by courts and tribunals to SRLs. As Lawler, Giddings and Robertson have highlighted, there are challenges in providing ‘coherent and user-oriented’ resources about legally complex matters.654 There can be a disjunct between what SRLs need in terms of process-oriented, practical resources and what the court or tribunal provides based on its goals and motivations in providing the resources.655 That is, courts and tribunals might be providing resources to create ‘informed citizens’ as opposed to ‘effective legal self-helpers.’656 Providing resources focused on procedural steps, rather than trying impart complex legal knowledge, is more practical and effective for the SRL.657 Lawler, Giddings and Robertson encourage courts and tribunals (and other legal information providers) to consider their motivations and goals in developing legal self-help material for SRLs.658 They also advise seeking insights and feedback from users and potential users in a systematic manner.

Online information

The LAW Survey indicates that only a relatively small proportion of people with legal problems access information online; rather, they prefer to speak to people one-on-one on the phone or face-to-face.659 Forell and McDonald have highlighted that community legal education and information, while an important part of a multifaceted response to improving access to justice, is not a magic bullet in of itself.660 Research by Denvir in the UK has shown that exposure to online legal information does not necessarily equate to improved knowledge of rights or how to handle the legal problem.661 It is likely that a similar situation arises for online information provided by courts and tribunals for SRLs. Indeed SRLs have reported that they face difficulties, where even if they can access and understand the generic online information, applying it to their own situation is very different and difficult.662 Providing good quality

653 Ibid; Pascoe Pleasence, Christine Coumarelos, Suzie Forell, Hugh M. McDonald, Reshaping legal assistance services: building on the evidence base (Law and Justice Foundation of NSW, 2014)
655 Ibid.
656 Ibid.
657 Ibid.
658 Ibid.
659 Coumarelos et al, above n 62.
660 Suzie Forell and Hugh McDonald, Beyond great expectation: modest, meaningful and measurable community legal education and information Justice Issues 21 (Law and Justice Foundation of NSW, 2015).
661 Catrina Denvir, ‘Online and in the know? Public legal education, young people and the Internet’ (2016) 92-93 Computers & Education 204.
information about court and tribunal processes cannot be ignored, but it is only part of the response needed to provide access to justice.

These findings are consistent with local empirical research. QCAT conducted a survey on the accessibility of online information which had 181 participants, finding that:

- Fifty one per cent of users tried to access information or a service online before either calling or visiting a counter.
- Of the users who did not first try to access information online, 38 per cent identified they preferred to access government services online and 31 per cent preferred to access these services by telephone.
- The primary reasons for telephoning after searching online included not being able to find information online (31%), wanting to talk to someone (26%) and difficulty understanding the online information (25%)
- The primary reasons for visiting a counter after searching online included to lodge documents (63%) and needing information or advice (13%).663

Self-Representation Services

In terms of the value of face-to-face, one-on-one support, evaluations of the Queensland LawRight Self-Represented Service (SRS) have shown that the service is effective and well-regarded. The evidence is in its infancy, and what exists is not methodologically strong, but is showing positive indications so far. In an early evaluation of the first 8 months of the service’s operation using surveys, interviews and review of court files, Banks found that the program was effective in providing SRLs with discrete task assistance and legal advice.664 The SRS was successful in diverting some SRLs away from the courts altogether by discouraging unmeritorious cases, and it was well received by SRLs, judges and court staff.665 De Smidt and Dodgson also concluded that the SRS operating at QCAT was having a diversionary impact (though less so at QCAT than at courts where the SRS operates in Queensland, which was possibly due to the low fees at QCAT), and that SRS clients were ‘entering hearings or conferences/mediation rooms better organised and prepared with a clearer idea of procedures, possible outcomes and compliance.’666 Giddings, McKimmie, Banks and Butler evaluated the QPILCH Self Representation Service and found that it was well-received by SRLs and had a positive impact on their subjective experiences of their legal issues.667 Judges and court staff were generally satisfied with the SRS also.

A 2015 cost-benefit analysis of the SRS in the Federal Court found that it led to reductions in court operating costs of around $372,176, equating to a benefit-cost ration of 2:1.668 The diversionary role of the SRS was highlighted in a recent article by Justice McMurdo regarding the service provided to the Court of Appeal of Queensland by the SRS.669 Justice McMurdo noted that in 2013, of 10 potential appeals by SRLs, nine were assessed as not having merit and the litigants advised they were unlikely to succeed. Four of those nine SRLs accepted this advice and 5 commenced appeals, among which three that were heard in the financial period, were unsuccessful.670 The SRS also helped 5 SRLs in that year who had already commenced appeals: 3 were assessed as having merit and each resulted in a negotiated settlement; one

664 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, 2012).
665 Ibid.
668 BDO, Cost-benefit evaluation of the Self Representation Service at the Federal Courts, Brisbane (June 2015).
669 McMurdo, above n 577.
670 Ibid.
was referred to a legal firm for representation and received judgment in their favour; and one was not decided in the financial year.671

Macfarlane noted in her study that duty lawyer or summary advice schemes are generally valued by SRLs but not all had positive experiences and some felt poorly served and frustrated by the extent and quality of the assistance they received.672 In the United States, Greacen has conducted research of the benefits of SRLs using self-help centres and found that providing one-on-one support and information services led to savings to SRLs and courts of:

- at least one hearing per case;
- between 5 and 15 minutes of hearing time for every hearing held;
- between 1 and 1.5 hours of court staff time at the front counter helping SRLs; and
- reviewing and rejecting proposed judgments.673

Further, the length of time set aside to hearing matters involving SRLs in family law matters was reduced significantly after the court introduced a monthly seminar where SRLs could get assistance completing forms, calculating child support amounts and mediating child custody issues.674

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671 Ibid.
672 Macfarlane, above n 111.
674 Ibid; Greacen, above n 650.
Part 4. Online resources from key organisations

There is a large amount of information for SRLs online, though gaps remain in Australia and New Zealand. This is a constantly evolving area and research in the broader fields of access to justice, legal assistance, legal aid, and the legal profession, also have a bearing on SRLs. The summaries below provide an overview of online resources from key organisations and others are referred to the preceding sections and Appendix A. Grainger’s report also provides a good overview of different programs and innovations in New Zealand, the US and the UK.\(^{675}\)

**Australia and New Zealand**

Generic legal resource websites provide legal information and assistance to the general public with some specific resources for SRLs within those websites. The VAJR contains a description of many online resources of legal information relevant to SRLs.\(^{676}\) The key online resources for legal information it identifies are:

- **Everyday-Law Victoria**
- **Law Access NSW**
- **Find Legal Answers** (State Library of NSW)
- **Legalpedia Queensland**
- State and territory Law Societies
- **LawRight** (formerly QPILCH)
- **Justice Connect**
- Legal Aid bodies
- Community Legal Centres
- Aboriginal Legal Services

The table in Appendix A also canvasses these and other leading resources. In New Zealand, legal information resources are available from the Community Law Centre website and the Citizen Advice Bureau. The Australian public has access to a range of useful websites that provide legal information in plain language and accessible and engaging formats. Some states are more advanced than others, with Victoria, New South Wales and Queensland leading the way with amount of information available and good quality websites such as the Everyday-Law website, the Law Access NSW website and the Legalpedia Queensland website. Many legal aid commissions, community legal centres and bodies such as LawRight provide useful resources for SRLs on the law and about legal process.

Courts and tribunals in the Federal jurisdiction tend to do a better job of tailoring their websites to SRLs, but the Supreme Court of Victoria and the Court of Appeal of Queensland also have well organised websites that provide a range of procedural information for SRLs presented in an accessible and logical fashion. There is considerable room for improvement with a number of court websites. On the whole, tribunals tend to present higher-quality online resources, particularly the larger tribunals such as QCAT, VCAT and NCAT, which is to be expected given that these tribunals expect and are designed for SRLs. More recently designed websites, on the whole, tend to be better designed and easier to use.

However, despite the rise in legal information and tailoring of information for SRLs on court and tribunal website, the gap for SRLs is the lack of a dedicated Australian website for SRLs such as exists in Canada and for professionals working with SRLs in the UK and US. These are reviewed below.

\(^{675}\) Grainger, above n 349.

\(^{676}\) Victorian Government Department of Justice and Regulation, above n 65, Chapter 2.
Canada

The **National Self Represented Litigants Project** (NSRLP) provides a comprehensive online resource for SRLs in Canada. The website builds on Macfarlane’s 2013 study. The NSRLP continues to publish information about SRLs and their experiences similar to the information found in the original research report to enable a continuing understanding of the SRL population in Canada. The website contains a number of videos of SRLs discussing their experiences. The website is accessible and easily navigable, using plain language throughout. It constitutes an excellent resource for SRLs. The website is unique, with no similar resource specifically for SRLs among UK, US and Australian websites.

The NSRLP has developed a number of resources to assist SRLs (available in audio and in writing) including:

- Guide for Self-Represented Litigants with Disabilities
- Reading and Understanding Case Reports: A Guide for Self-Represented Litigants
- Coping with the Courtroom
- ‘My learned friend’ - Working with opposing counsel
- CanLII primers in English and French
- Settlement smarts for SRLs
- Mindfulness training and stress reduction for SRLs
- A Courtroom Companion – choosing McKenzie friend and presenting them to the court
- Working with SRLs – Ideas and Suggestions from the Bench
- Summary of Pintea v Johns (2017) SCC 23 for SRLs

In addition to these publications the NSRLP have developed the following useful resources:

- National Directory of Professionals Assisting SRLs
- The legal coaching model
- Case law database
- The NSRLP Interactive “Game”
- A regularly updated annotated bibliography
- SRL Intake Reports

Resources it provides for law students and legal practitioners include:

- SRL Conflict Coaching Class at Windsor Law School
- Legal coaching training workshops for lawyers
- Annual Bring a SRL to Law School Day

Other initiatives to raise awareness about SRLs include

- SRL awareness day
- Podcast on A2J and SRLs.
- The NSRLP Blog

In Canada, other important resources relating to SRLs include (but are not limited to):

- Canadian Judicial Council’s **Statement of Principles on Self-Represented Litigants and Accused Persons** (2006) – the aim of these principles is to foster access to justice and equal treatment under the law. This statement was recently endorsed in a landmark SRL Supreme Court decision in *Pintea v Johns* (2017) SCC 23.
- **Canadian Forum on Civil Justice** - National A2J Action Committee – the Committee has produced a range of reviews and reports which touch on issues relating to access to justice and SRLs.
• **Access to Justice Research Network** – this blog contains a wide range of access to justice research including SRLs – it mainly targeted at academics, policy makers, judges, court staff and lawyers.

• **Clicklaw** – a site that provides legal information, education and help for British Columbians.

• **Your legal rights** – a legal information site for Ontario. Also conducts public legal education webinars.

• **Steps to Justice** – Step by step legal information about common problems in Ontario.

**United Kingdom**

In the United Kingdom, there are a number of online resources that could be utilised by SRLs, although in the UK these resources are largely aimed at professionals working with SRLs and there is no similar resource to the NSRLP for SRLs. Key websites include:

The **Litigant in Person Network** – this website states that: “The Litigant in Person Network (the Network) is an online platform which aims to connect a wide range of people with a common goal of improving access to justice. Coordinated by the Litigant in Person Support Strategy, and supported by The Legal Education Foundation, the Network is a place for you to share, discuss and collaborate across sectors.” The Litigant in Person Support Strategy is funded by the Ministry of Justice. The Network has a wide range of resources on the website divided into sections:

- Signpost – share experience and expertise, find out about resources, projects and developments and signpost others to yours
- Connect – discuss, ask questions and collaborate
- Engage – keep up to date with research and engage with policy and public sector change

The Litigant in Person network website appears to be aimed at connecting people working in the civil justice system, advice agencies or researchers working in this area, rather than providing direct resources for SRLs. The website contains comprehensive information about research, activities and innovations to assist SRLs and is therefore more likely to assist SRLs indirectly as a result.

**AdviceNow** – provides legal and practical advice for people going to or thinking about going to court without a lawyer. The byline under the title of the website states ‘boost your knowledge, confidence and skills.’ The description of the website is that it ‘acts as a one-stop-shop pulling together the best information from across the web, self-help guides and tools, and guidance on how to access the advice and support that is available.’ The website is an initiative of [Law for Life – Foundation for Public Legal Education](https://www.citizensadvice.org.uk/). There are numerous [in depth Advicenow guides](https://www.adviceforall.co.uk/) available on the website. The website is organised by the type of problem that the person has. Advicenow has created a number of [videos](https://www.youtube.com/user/CitizensAdviceUK). This website is similar to the Everyday-Law website and Law Access NSW website.

**Royal Courts of Justice Citizens Advice Bureau** (RCJCAB) – The RCJCAB has been providing services for SRLs within the Royal Courts of Justice since 1978. The website provides information about the service as well as civil law [information leaflets](https://www.gov.uk/civil-proceedings) in plain language on alternatives to going to court, before starting, first steps, starting your claim and the pretrial process and hearings, the trial and appeals. The RCJCAB also provides [debt advice services](https://www.gov.uk/government/publications/local-authority-debt-advice) and financial literacy project [Fit Money](https://www.gov.uk/government/publications/local-authority-debt-advice). The larger [Citizens Advice Bureau](https://www.citizensadvice.org.uk/) webpage has a range on information on legal topics in plain language. The Citizens Advice Bureau has also created a handbook for SRLs entitled [Standing alone: Going to the Family Court without a](https://www.adviceforall.co.uk/).
lawyer (2016). CourtNav - CourtNav is an online tool developed by the RCJ Advice designed to help SRLs complete a divorce petition.

For Judges and legal professionals the key resources for assisting those dealing with SRLs include:


In Europe, the Building EU Civil Justice project is aimed at improving access to justice at the EU and has a subproject on self-representation which will “scrutinise the self-representation trend against the background of access to justice. On the basis of normative, comparative and substantial (primarily qualitative) empirical research, it will evaluate how self-representation changes procedural dynamics between courts and parties as well as the repercussions for the effectiveness of litigation and procedural justice as components of access to justice.”

United States

As noted above, there is no similar website to the NSRLP in the United States. However, throughout the US regionally, there are many self-help centers that have a wide range of specific resources for SRLs.

The Self-Represented Litigation Network is a not-for-profit organisation that supports justice system professional reform the legal system to best support SRLs. It connects ‘lawyers, judges and allied professionals who are creating innovative and evidence-based solutions so that self-represented litigants have meaningful access to the courts and get the legal help they need’. It was created as a national organisation by Richard Zorza, a lawyer who has worked over 25 years to improve access to justice for SRLs. The SRLN website houses an on-line resource center, provides scholarship, research and evaluation, conducts conference on self-representation. It developed publications such as:

- Effectiveness of Courtroom Communication in Hearings Involving Two Self-Represented Litigants (2008)
- A Model for a Comprehensive Self Assessment of Court Programs to Assist Self-Represented Litigants (2007)

Other important resources include:

- Legal Information Institute provides US legal information online.
- The National Center for State Courts website has a comprehensive list of self-help centers and information resources for SRLs in the United States.
- LawHelp.org provides legal information via legal education guides and referral to free legal assistance.
Part 5. Future directions for research

Research on the topic of SRLs continues to be conducted around the globe. In Northern Ireland, a large-scale empirical study is underway examining the impact of SRLs on that country’s court system. The study seeks to answer questions such as:

- Who are litigants in person in Northern Ireland?
- What is it like to bring a civil or family case without legal representation in Northern Ireland?
- What is the impact of litigants in person on the Northern Ireland court system?
- How does advice on completing paperwork and court procedure help litigants in person?
- Are there any threats to the human right to a fair trial when litigating in person?

Beyond this exploratory work, in some jurisdictions the research has progressed to experimental approaches that test the impact of SRL-orientated interventions and supports. Greiner and colleagues at the a2jLab at Harvard Law School are using a randomised trial to assess the effectiveness of self-help materials to support defendants in debt matters to participate in proceedings. Such approaches remain a rarity in legal research, but are a promising means to identify successful interventions.

In Australia and New Zealand, where should the next focus on research be? To summarise what we know:

- Stakeholders perceive that the prevalence of SRLs has increased in recent years but the empirical evidence supporting this perception is mixed, inconsistent, or non-existent, depending on the forum.
- It may be difficult to constructively further knowledge about the prevalence of SRLs without good quality court and tribunal data, which does not yet appear to be available and would require a significant investment of resources and commitment from organisations. Additional one-off studies about the prevalence of SRLs are unlikely to advance understanding on this issue.
- Though findings vary by forum and jurisdiction, we now know a considerable amount about the reasons for self-representation, SRL demographics, and the experiences of SRLs in civil justice systems. There are consistent themes regarding the experiences of SRLs in recent large studies in Canada by Macfarlane, and in smaller studies in New Zealand by Toy-Cronin and Trinder et al in the UK. These studies highlight similar issues and experiences as the earlier literature.
- We also know from the major academic studies that judges, court staff and lawyers find dealing with some SRLs challenging and all have found ways to manage those challenges. But the experience among these groups is that while SRLs increase the workload of personnel and the court, they are a fact of life. SRLs as a whole may not be experienced as problematic, but a small cohort of SRLs (variously described as persistent litigants or querulous litigants), are particularly challenging to deal with.
- We know less about the impact that SRLs have on delay and SRLs’ use of court resources in so far as being able to quantify with specificity how much longer or shorter cases with SRLs are, the impact on outcomes and on other parties. However, answering this question is again challenged by the available institutional data about SRLs.

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677 The study, lead by Professor Grainne McKeever at Ulster University School of Law is funded by the Nuffield Foundation: see [http://www.nuffieldfoundation.org/impact-litigants-person-northern-ireland-court-system](http://www.nuffieldfoundation.org/impact-litigants-person-northern-ireland-court-system).
678 See [https://www.ulster.ac.uk/faculties/arts-humanities-and-social-sciences/schools/law/?a=119720](https://www.ulster.ac.uk/faculties/arts-humanities-and-social-sciences/schools/law/?a=119720).
• We know relatively little about the effectiveness of responses to SRLs, but we do know that:
  o there are good reasons from an access to justice viewpoint to improve the quality and accessibility of information available to SRLs on court websites;
  o SRLs prefer and benefit from one-on-one, face-to-face procedural assistance; and
  o case management approaches may provide SRLs with the consistency and support that they require.

Where should future research take us?

A number of suggestions are presented below as means to address the continuing research and knowledge deficits around SRLs’ impacts on and experiences of civil and administrative justice in Australia. Several of these recommendations are consistent with the themes and future directions identified by the AIJA and Federal Court of Australia in their work in this field almost 15 years ago. These relate particularly to the potential for the AIJA to provide a central clearinghouse and coordination function for SRL developments. The AIJA could act as a coordinating body across Australian and New Zealand jurisdictions, to improve information for SRLs and resources and guidance for those working in courts and tribunals. Specifically, it could consider:

• Creating a SRL clearinghouse that gathers information about SRLs in Australia and New Zealand together in one location to assist judges, the legal profession and court staff. There is a valid argument that information for SRLs should be housed and managed separately on websites that provide public legal information such as Everyday Law and Law Access NSW, or via specific hubs created for the purposes of assisting SRLs. However, currently in Australia there remains a lack of SRL-specific information or detailed assistance on representing oneself on these websites. This information requires development, in collaboration with courts and tribunals. A central resource, such as Representing Yourself Canada, that provides information for SRLs, legal professionals and judges is also worthy of consideration so that there can be some mutual learning among the different groups on the experience of self-representation. The AIJA would need to be mindful and attentive to the audiences that it seeks to serve through a SRL clearinghouse.

• Bringing Australian and New Zealand courts and tribunals together to discuss and develop initiatives to:
  • find solutions to the persistent challenges of institutional data collection;
  • provide clear guidelines for judges, court staff and SRLs and other practical assistance on the divide between legal information and legal advice; and
  • explore how the increasingly consistent recommendations of the leading academic research and government inquiries could best be implemented, and findings shared.

• Developing accessible online resources for SRLs, similar to the Canadian NSRLP resource ‘Working with SRLs: Ideas and Suggestions from the Bench.’

Despite the broad consistency of these recommendations with earlier research, it is also the case that some previous gaps in knowledge about SRLs have been, at least partially, addressed (for example, in terms of exploring SRLs’ experiences and judges’ perceptions), and new needs have emerged. With regards to meaningfully addressing the ongoing concerns regarding the collection of and quality of data about SRLs, Richardson, Sourdin and Wallace identified in 2012 a range of data that should be collected by courts and tribunals and these were outlined in part 2.2.1 of this report.
This evidence base could be usefully furthered by new research that explores how these recommendations could best be implemented with interested courts and tribunals and the forum-specific challenges and opportunities for improving data collection. This work should also engage government bodies such as Court Services Victoria and external legal advice and legal information providers on how best to address the ongoing data deficits and advance the discussion in a meaningful way. These organisations may already be collecting data that could be linked to courts and tribunals, and opportunities to ensure consistency and co-production of data should be explored.

Additional research is also required about groups of SRLs whose specific needs give rise to particular challenges, including in relation to lawyers’ professional obligations. These include SRLs in matters where domestic and family violence is an issue. This particular topic is the subject of research to be undertaken in 2018-2019 funded by ANROWS and supported by the AIJA. However, other under-researched groups include SRLs with mental illness or cognitive impairments and CALD groups. Future research is warranted to explore the experiences of these SRLs, their impacts on courts and tribunals and to improve data collection to inform policy development.

Based on the analysis provided in this Environmental Scan, there is a pressing need to better understand which SRL-related interventions and responses work best to improve outcomes for courts, tribunals and for SRLs, and optimise the use of justice system resources. In particular, a more robust evidence base is required to establish the effectiveness of innovations and interventions in SRL case management and support services. Such evidence would be valuable for facilitating assessment of the return on investment connected to SRL-related practices, the building of business cases to support successful programs and the identification of ineffective approaches. Additionally, it would be very useful in terms of information sharing between forums and jurisdictions. The pressing operational concerns of courts and tribunals are likely to mean that research and evaluation of the kind described here is not accorded high priority. This is an opportune area for partnerships between academic researchers and courts and tribunals to achieve the construction of an evidence base of use to the entire justice sector. Ideally, such research and evaluation would be planned alongside SRL interventions and programs in order ensure the highest quality analysis and efficient use of available data.

Future research on SRLs should also be attentive not only to those litigants and matters that make their way to a court or tribunal, but also those that are diverted away or deterred. It has been suggested by the Productivity Commission and the VAJR, for example, that measures should be developed to assist courts and tribunals to divert some ‘inappropriate’ matters involving SRLs, but it is unclear how such matters would be identified or on what basis cases would be deemed inappropriate. Toy-Cronin has suggested there are difficulties with court staff acting as gatekeepers and clear guidance or transparency regarding how and what matters are categorised as inappropriate is an important access to justice issue. Accordingly, future research to identify measures that assist court and tribunal staff and SRLs should examine:

- the extent to which different programs or responses to SRLs results in the diversion of ‘inappropriate’ cases and how these are determined;
- the benefits and disadvantages of various programs/responses as experienced by SRLs, judicial and tribunals officers, court staff, lawyers and opposing parties.

A further area that remains particularly challenging is the divide between legal information and legal advice and how judicial officers, tribunal members and court staff negotiate and manage

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680 Toy-Cronin, above n 18, 246.
that divide. This specific area is ripe for further investigation, particularly in light of the turn toward legal technology and online resources to address justice system users’ needs. Indeed, courts and tribunals’ increasing experimentation with online mechanisms of dispute resolution creates opportunities for rigorous research and evaluation to assess the performance and success of such interventions.

Though large-scale experimental studies of the kind conducted by Greiner and colleagues are undoubtedly the gold-standard of work in this field, smaller scale and less resource-intensive research, in the form of process evaluations and stakeholder consultations, are worthwhile starting points. To support the development of the effectiveness evidence base, AIJA could consider facilitating collaborations between courts, tribunals and research partners to evaluate interventions and responses to support SRLs and the forums in which they appear.
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Appendix A: Table of Australian and New Zealand Court and Tribunal SRL responses and services

The lists below refer to all court and most tribunals in each state, and the Commonwealth jurisdiction, of Australia and New Zealand. Tribunal websites that did not appear to address SRLs, mention SRLs or have specific information about appearing before the tribunal were not included in the table. The information in the table is current as at 17 April 2018.

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<tr>
<th>State</th>
<th>Court</th>
<th>Resources/responses for SRLs</th>
<th>External programs and services</th>
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<tbody>
<tr>
<td>Victoria</td>
<td>Magistrates’ Court of Victoria</td>
<td>The Magistrates’ Court of Victoria has a wide range of information on its website. Information for people self-representing is not immediately obvious from the front page of the website nor is it labelled as information for SRLs. Most information is found at subpages, housed under the ‘About Us’ section of the website. The information is not overly detailed but is found at the following pages:</td>
<td>There are a number of websites that have emerged in recent years to help unrepresented people. Everyday Law, published by the Victoria Law Foundation, is a website and phone service that provides easy to understand legal information. The website was awarded the ClearMark Award 2015 for excellence in communication from the Center for Plain Language in Washington, DC. In addition to providing legal services, Victoria Legal Aid has a section of its website dedicated to legal information entitled Find Legal Answers. JusticeConnect provides a Self Representation Service in Melbourne at the Federal Court or the Federal Circuit Court and VCAT in the Domestic Building Legal Service. The website also contains a range of fact sheets for SRLs on various topics. JusticeConnect also coordinates pro bono legal assistance through its Public Interest Law Service. Other websites that assist people who have received fines include the Fine Fixer website—a free service provided by the Moonee Valley Legal Service that was created using funding from the Victorian Law Foundation. It provides easy to follow information about how to fix a fine and information about all options available to the person when they have a fine. The website was designed in conjunction with a strategic design consultancy. <a href="http://www.robot-lawyers.com.au">www.robot-lawyers.com.au</a> enables unrepresented people prepare their story to better state their case before a magistrate in court when they have committed a minor driving or criminal offence. The website has been created by Bill Doogue and Andrew George from Doogue + George Defence Lawyers In response to the VAJR, the Victorian Government announced that it would inject further funds into legal resources, including:</td>
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   - The package will deliver $7.23 million for additional legal aid grants to ensure better access to legal representation, and a further $6.85 million will go towards expanding the Legal Help phone service and improving Victoria Legal Aid’s website. |

   - Duty lawyer services will get a $2.59 million boost to provide more assistance to people at court, such as victims of family violence. Another $1.27 million will be spent on increasing translating and interpreter services. |   |
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<tr>
<td>Neighbourhood Justice Centre</td>
<td>The NJC is part of the Magistrates’ Court of Victoria but has its own website that is user-friendly, uses plain English, is easily navigable, and has been designed with the layperson in mind. The NJC magistrate sits in a number of jurisdictions at the NJC including, in relation to civil justice matters, the Victorian Civil and Administrative Appeals Tribunal. The NJC also provides access to mediation services. The NJC website contains a video of the virtual NJC courtroom so that people can view the courtroom before attending court. The NJC website has an online application process for family violence intervention orders.</td>
<td>Individuals may access free legal advice and representation at the NJC regarding VCAT matters from Victoria Legal Aid and Fitzroy Legal Service.</td>
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<tr>
<td>Children’s Court of Victoria</td>
<td>The Children’s Court of Victoria has two divisions dealing with cases involving children and young people: the criminal division and the family division which determines applications relating to child protection and applications for intervention orders. The Court introduced Court Advice and Support Officers in 2016 to assist SRL young people and their families navigate the court with respect to child protection matters. They can assist SRLs by: liasing with lawyers from the Child Protection Litigation Office or Victoria Legal Aid; expediting matters at the registry; explaining the process and procedures of the court; managing expectations and providing support; attending the hearing with the self-represented litigant; and making referrals to other support services. (VAJR, 479) The Court website also provides information for the young person in Child Protection cases which is written directly for the child or young person links to a Virtual Court to assist the child/young person understand court processes and the roles of those who work in the courts. It contains: 2 mock court hearings virtual interactive tours of the courtroom information about preparing for court. The information is also available in Auslan.</td>
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<tr>
<td>County Court of Victoria</td>
<td>From the front page of the County Court of Victoria website SRLs can access the 'I am representing myself' button which takes users to the following resources: I am thinking of representing myself I want to start a case I want to defend a case I need to serve a document I have a default judgment made against me What I need to do before the trial I need to make discovery The trial Subpoena witnesses and documents Final judgment and enforcement I want to represent a corporation I need help Frequently asked questions Glossary of terms There is a separate section for SRLs in the criminal division. Resources for SRLs in civil matters that have been provided on the website include: A diagrammatic representation of the process of a civil proceeding entitled ‘The life of a case’ Link to video, step-by-step guide to civil proceeding (8'29”) Plain language is used for the written resources. The Court has created a Practice note for common law SRLs (May 2016, updated 10 August 2018).</td>
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<td>State</td>
<td>Court</td>
<td>All pre-trial proceedings involving SRLs managed by one, specific judge.</td>
<td>Judicial registrars have implemented two measures:</td>
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<td>• Registry provides assistance to SRLs.</td>
<td>1. Where appropriate, offered judicial resolution conference (mediation conducted by judicial registrar)</td>
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<td>2. Placed onto expedited case list and actively managed</td>
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<td>In response to the VAJR, the Victorian Government announced that it would inject further funds into legal resources, including:</td>
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<td>Self-represented litigants will be better supported to navigate the legal system, with the County Court receiving $1.1 million for specialist workers to provide support for self-represented litigants. Duty lawyer services will get a $2.59 million boost to provide more assistance to people at court, such as victims of family violence. Another $1.27 million will be spent on increasing translating and interpreter services. (AG media release May 2017)</td>
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<td>Supreme Court of</td>
<td>The Supreme Court of Victoria website has a link from the front page 'Going to court' with a menu item Representing Yourself which has the resources:</td>
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<td>From the bottom of the front page of the Supreme Court of Victoria website another link to Representing Yourself exists but is structured somewhat differently though it contains similar information. Information is organised according to:</td>
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<tr>
<td>Victoria (and Court</td>
<td>1. Starting a legal action</td>
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<td>• Find out about the Court</td>
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<td>of Appeal)</td>
<td>2. Defending a legal action</td>
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<td>• Are you involved in a proceeding?</td>
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<td></td>
<td>3. Appealing a decision</td>
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<td>• Self-help information packs</td>
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<td></td>
<td>4. Getting legal help – which provides links to help the person find legal representation – which has links to Law Institute of Victoria, Victoria Legal Aid, community legal centres, Justice Connect, Everyday-Law, the Law Handbook, and the Victoria Law Foundation</td>
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<td>Self-help information packs include: Appeal from a Supreme Court Associate Justice, Civil appeal from the Magistrates’ Court, Commencing and defending a writ or originating motion, Judicial review, VCAT appeals</td>
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<td>The Court of Appeal also has information for SRLs including a self-represented litigants (general) self-help information pack</td>
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<td>The Principal Registry provides tailored assistance in the way of information, procedural advice, links to legal services and referrals to the Duty Barristers Scheme of the Victorian Bar</td>
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<td>In response to the VAJR, the Victorian Government has stated that it will inject further funds into legal resources, including:</td>
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<td>Self-represented litigants will be better supported to navigate the legal system. The Supreme Court will get more than $2.08 million to enhance judicial mediation services as an alternative to costly civil proceedings. Duty lawyer services will get a $2.59 million boost to provide more assistance to people at court, such as victims of family violence. Another $1.27 million will be spent on increasing translating and interpreter services. (AG media release May 2017)</td>
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<td>Victorian Civil and</td>
<td>The VCAT website is written and designed with SRLs in mind, as it is expected that many people will not have legal representation. It has two clearly identifiable sections that provide information about dispute types and the steps to resolve cases:</td>
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<td>Administrative</td>
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<td>Tribunal (VCAT)</td>
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|              |                                                                       | • Make a complaint  
• Contact the MHT with any other questions  
Under the ‘what to expect at my Tribunal hearing’ page there is a written guide which is 6 pages long explaining why the person is having a hearing, what is a hearing, how to prepare for a hearing, what to expect after a hearing. The guide also contains links to external resources including Victoria Legal Aid and the Mental Health Legal Centre. The written text mostly uses plain English, but is reasonably dense and may be difficult for some people to understand. The website speaks directly to the patient in the Information for Patients but uses only written information to communicate which, although comprehensive, may not be accessible to everyone. Visual aids may assist readers to understand the process better. The MHT website contains readily accessible links to other useful websites such as Victoria Legal Aid, the Mental Health Legal Centre, the Mental Health Complaints Commission, among others. |
|              | Police Registration and Services Board of Victoria                     | The Police Registration and Services Board website contains information about appealing a promotion or transfer decision. The website provides a detail written guide and information for appellants about what happens in an appeal, preparing for an appeal (with numerous tips and traps suggestions for how to present an appeal). |
|              | Victims of Crime Assistance Tribunal of Victoria                        | The VOCAT website is written directly to the layperson applicant. Plain English is used in places and the website appears accessible and easily navigable. The first menu item is How to Apply. This section permits a person to submit an online application for assistance. The website uses written text only to explain what VOCAT does and the process. The written text is considerable and may be hard to understand for some users. Some terminology in various sections of the website might be considered overly legalistic and definition pop-up boxes for legal terminology is not used. |
|              | Victorian Commission for Gambling and Liquor Regulation                | The Victorian Commission for Gambling and Liquor Regulation contains information for a range of licenses. A button linking to information about hearings and decisions can be found at the bottom of the front page of the website. On the About Commission hearings and decisions there is some information about hearings and appealing decisions, and information sheets on various topics regarding applications and appeals. All material is written and with limited plain English. |
| New South Wales | Local Court of New South Wales                                         | The main toolbar on the front page of the Local Court of NSW website links to a page entitled What to expect in court, which contains links to a number of pages written to the layperson court user, about the legal process and the court. From here, the representing yourself page provides the following information/links:  
1. LawAccess NSW  
2. Legal Information Access Centre  
3. Court and tribunal websites (only supreme court and land and environment court)  
4. Legislation  
5. Uniform civil forms and rules  
6. Decisions and judgments  
7. Practice and Procedure  
8. Can you bring a friend to support you?  
With the exception of nos.1, 2, 8, these resources are not tailored to SRLs. The website portrays that going to court is complex and that the person should seek legal advice. Even under the representing yourself section there is no genuine, tailored self-help material. Although, the website does link to the LawAccess NSW website, which does provide more extensive information about representing yourself including written and video information. There is information on what assistance court staff can give, who’s who in court, going to court for a civil case, among other topics. |
<p>|              |                                                                       | JusticeConnect provides a Self Representation Service in New South Wales at the Federal Court or the Federal Circuit Court. The website also contains a range of fact sheets for SRLs on various topics. JusticeConnect also coordinates pro bono legal assistance through its Public Interest Law Service. |
|              |                                                                       | LawAccess NSW is a free government website and telephone service that provides legal information, referrals and for some people, legal advice. The website contains a large amount of written material including information about the law and legal skills. The website also contains videos for SRLs in criminal matters; Apprehended Violence Orders, Apprehended Domestic Violence Order and Small Claims. Under Small Claims, the videos are for preparing for a pre-trial review and the hearing. Law Access provides phone advice for SRLs. |
| District Court of New South Wales |                                                                       | Law Society of New South Wales – Guidelines for dealing with self-represented parties in civil proceedings 2nd Ed December 2016 – Although the guidelines are for solicitors, the Appendices contain information for SRLs including general information about seeking legal advice and what the SRL can expect form the solicitor appearing for the other party in litigious and non-litigious |</p>
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| Supreme Court of New South Wales (and Court of Appeal of New South Wales) | The Supreme Court of NSW website provides a link on the front page to ‘representing yourself in civil proceedings’. This page provides information for SRLs on a series of pages and is available as a downloadable word doc. Information is included on:  
• preparing for court appearance (including links to court rules and forms – but these are not tailored for SRLs),  
• finding legal assistance,  
• first steps in civil proceedings, legal terminology  
• things to consider prior to formal legal action,  
• what the court expects of you,  
• what to expect after a hearing,  
• what to expect during litigation.  
There is an emphasis on getting legal advice and that it is better to have a lawyer. | The Office of the Legal Services Commissioner has a website entitled Find Legal Answers which houses extensive legal information for the public with a wide range of resources and links to other sites. There are a range of publications called Hot Topics which explain the law in plain language. Also, on that website can be found a book by Nadine Behan (Redfern Legal Publishing Book, 2009) entitled How to run your own case – A practical guide to representing yourself in Australian courts and tribunals. The full text of the book is available online. The Office of the Legal Services Commissioner also has a range of fact sheets, that are aimed at SRLs regarding complaints about lawyers, cost disputes, negligence and liens. |
| New South Wales Civil and Administrative Tribunal (NCAT) | The NCAT website is largely written for SRLs, consistent with the expectation that most people will not have legal representation when appearing before the tribunal. The website contains information about making an application and going to the tribunal and information about the specific jurisdictional areas of the tribunal: Administrative and Equal Opportunity, Consumer and Commercial, Guardianship and Commercial. The Consumer and Commercial section has steps on how to resolve your matter. The website contains a number of videos on tenancy, guardianship, home building and review of administrative decisions which can be viewed in different languages. There is also a definitions section of the website. | | |
| Housing Appeals Committee of New South Wales | The Housing Appeals Committee website is largely written for SRLs because legal representation is generally not permitted as it is not a legally-based review process. However, the person may apply to have an advocate (that is, a support worker, a tenancy advice service worker, a friend or colleague, or a family member) appear on their behalf. The website contains information about what is an appeal, what can be appealed, what happens next, how to appeal, and frequently asked questions. Links to the Tenancy Advice and Advocacy Service website are provided, but this is not necessarily easy to find from the front page. Applicants can appeal online. | | |
| Industrial Relations Commission of New South Wales | The Industrial Relations Commission of NSW does not provide specific information for SRLs but has a section on ‘legal advice and representation’ which states that people may appear before the Commission as an SRL but that many people prefer representation by a trade union, employer organisation, legal aid service, lawyer or an industrial relations consultant. Parties may also apply to be represented by a friend, relative or community representative. There are a range of links to external websites for legal advice and information. | | |
| Land and Environment Court of New South Wales | The Land and Environment Court of NSW has a wide range of material written for the SRL on its website and much of the website targets SRLs. The first tab on the main toolbar ‘Your legal problem is about...’  
Under ‘Coming to the court’ there is a link to a page ‘Representing yourself in court’, as well as pages entitled ‘having someone represent you’, ‘what court staff can and can’t do’, ‘preparing for an appearance’, ‘what to expect at hearings’.  
On 8 March 2018, the LECNSW announced on its website that a duty lawyer scheme would be trialled for a 6 month period commencing 6 April 2018. The pilot scheme is aimed at assisting SRLs in classes 4 and 5 of the court’s jurisdiction but may be expanded to other classes if successful. The duty lawyer will be available each Friday between 9am-12pm to provide preliminary advice to SRLs with the view to guiding them through the Court process and referring them to appropriate services. | |
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<td><strong>State</strong></td>
<td><strong>Insurance Regulatory Authority (SIRA):</strong></td>
<td><strong>The SIRA website contains a disputes and complaints section for workers’ compensation matters, motor vehicle injury disputes, home building compensation disputes.</strong> The resources under each section are written for laypeople and SRLs and clearly set out the steps to be followed in plain English with links to more extensive information sheets. Since the introduction of the Motor Accident Injuries Act 2017, the Dispute Resolution Service determines disputes with respect to decisions made by insurer’s about motor accident compensation entitlements. Applicants can lodge applications to the DRS online via Service NSW. Visual diagrams map the dispute resolution process and videos also explain some aspects of the process. For workers’ compensation disputes, applications can be lodged through the online merit review portal is available through the Merit Review Service. A comprehensive SIRA Dispute Resolution Services guide to Workers Compensation Merit Reviews is available on the SIRA website. However, the guide is relatively complex and may be difficult for a layperson to understand. Although the guide states that it seeks to educate and help workers about merits review, it is not written to the worker in plain English, in contrast to other areas of the website.</td>
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<td><strong>Workers</strong></td>
<td><strong>Compensation</strong></td>
<td><strong>The Workers Compensation Commission of NSW website is largely written for SRLs and explains the process and steps with written text and some pictorial diagrams. The website contains a large amount of information that is mostly written in plain English. The presentation of the information is not particularly engaging and may be difficult to read and comprehend for some readers.</strong></td>
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<td><strong>Commission</strong></td>
<td><strong>of New South Wales</strong></td>
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<td><strong>Queensland</strong></td>
<td><strong>Magistrates’ Court of Queensland</strong></td>
<td><strong>The Queensland Courts webpage contains a link to a ‘Going to Court’ menu from the front page. From here SRLs can link to the ‘representing yourself’ page that provides information for SRLs appearing in any Queensland court, with links to:</strong> Alternative dispute resolution legal advice general procedure advice resources and tools (forms, fees, file search facilities, legislation) information for lawyers useful links (courts, government agencies, general information), contacts for volunteers and advice, support for victims of crime, requesting information for legal proceedings, court security information, courthouse contacts and locations. The first line of the ‘Representing yourself’ page commences with ‘You don’t have to have a lawyer when you go to court. You can represent yourself in any of Queensland’s courts This website is designed to help you (‘a self-represented litigant’) navigate the courts system. However, you shouldn’t take the information on this website as legal advice and you may wish to consult with a lawyer about complex legal matters’ The first menu item: Alternative Dispute Resolution is well-placed as it suggests to SRLs that there are alternatives to resolving the dispute before coming to court. Under this section, in addition to mediation, a process called Case Appraisal is offered. Mediation is about helping parties reach an agreement themselves, whereas case appraisal involves a case appraiser assessing the merits of each party’s case and making a decision about the dispute, which is put in writing. If the parties are not happy with the decision they can elect to go to trial in the usual way. The section on ‘Getting advice: legal vs procedural’ covers the assistance that court registry staff can give SRLs.</td>
<td><strong>Legal Aid Queensland</strong> has a range of legal information available on its website. There is also a Civil Law Legal Aid Scheme. A duty lawyer scheme exists for domestic and family violence matters in the Magistrates’ Court and criminal matters.</td>
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<td>The section on Information for Lawyers provides a list of resources for SRLs that lawyers use in their work that the SRL might find useful in preparing their case. There are also a range of services that can be performed online.</td>
<td>LawRight (formerly QPILCH) provides a range of information for SRLs on its website. LawRight (QPILCH) has also prepared Self-represented litigants: Guidelines for barristers. The Queensland Law Society has published Guidance Statement No. 9 – Dealing with Self-represented Litigants (11 December 2017) and Self-Represented Litigants: Guidelines for solicitors. Practice Support (Version 2.1, November 2017). The Queensland Law Society also offers online continuous professional development workshops entitled Acting Against a Self-Represented Litigant.</td>
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<td>See above comments regarding the Magistrates’ Court</td>
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<td>General information about representing yourself is available as per the discussion above in the Magistrates’ Court. There is a specific webpage for representing yourself in the Court of Appeal of Queensland, which is a dot point list of things that the person can do to help their case; it mostly lists dress and behaviour expectations.</td>
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<td>The Land Court of Queensland is a specialised judicial tribunal and court of record. It encourages ADR and provides these services free of cost. The Land Court website has a dedicated section on ‘Representing yourself’ which covers preparing for court, the first court appearance, hearing day, the hearing process and information about parties being represented by an agent rather than an agent.</td>
<td>Environmental Defenders Office – The Community Litigants Handbook – Fourth Edition – it covers topics such as: * when and how to commence a court action, * the costs and risks of litigation, * how to prepare and file court documents, * how to prepared your case and increase your chances of success, and * how to present evidence and appear in court.</td>
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<td>The Planning and Environment Court of Queensland has page for people who are contemplating representing themselves. The webpage links to a text entitled The Community Litigants Handbook – Fourth Edition published by the Environmental Defenders Office Queensland.</td>
<td>LawRight operates a Self Representation Service at QCAT.</td>
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<td>The QCAT website is written for the SRL in mind, as parties must represent themselves unless they are approved by QCAT to have legal representation or: - they are a child or a person with impaired capacity, - if the matter relates to disciplinary proceedings including a review of a disciplinary decision - if the enabling Act related to the matter allows it. The website contains information about the different lists and associated procedures. Some jurisdictions have checklists so that SRLs can ensure they are appropriately prepared in making their application. The website contains a section on legal advice and representation which contains links for legal advice to the Self Representation Service operated by LawRight. It also contains links to a range of other community legal services and community organisations. The website also has a list of what QCAT registry staff can and cannot do.</td>
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<td>The Medical Assessment Tribunals webpage is part of the WorkCover Queensland website. It is written directly to the layperson/SRL with information about ‘What to Expect’, with topics including ‘Before your medical assessment tribunal’, ‘After your medical assessment tribunal’, ‘Is the decision final?’ and ‘Being represented.’</td>
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<td>Tasmanıa</td>
<td>Magistrates' Court of Tasmania</td>
<td>The <a href="https://www.tas.gov.au/about-tasmania/things-to-do/services/courts">Magistrates Court of Tasmania</a> website has a <a href="https://www.tas.gov.au/service/magistrates-court/going-to-court">Representing yourself</a> webpage under the Going to Court tab. Gives a brief definition of a litigant in person and gives links to: • Legal aid eligibility criteria • Info for lawyers • Info re attending court • Info re what court staff can help with • Court forms • Fees • Specific info for money disputes, criminally accused, and family violence/restraining orders There is a page which outlines what court staff can and cannot do. There links to a range of organisations who provide legal advice. On the webpage there are links to four videos made by Community Legal Centres Tasmania about representing yourself: making an impression, pleading your case, trial, sentencing and appeal.</td>
<td>Community Legal Centres Tasmania provides four videos on representing yourself in a criminal matter. <a href="https://www.tas.gov.au/service/legal-advice">Tasmanian Law Handbook</a> is a plain English handbook about the law in Tasmania and is published by the Hobart Community Legal Service. The Service also provides free legal assistance and free legal information. Free legal information evenings are held by the service two nights a week.</td>
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<td>Tasmanıa</td>
<td>Supreme Court of Tasmania</td>
<td>The <a href="https://www.tas.gov.au/service/magistrates-court/going-to-court">Supreme Court of Tasmania</a> website provides only very limited information for SRLs. Under the Self-represented litigants webpage, found under the Going to Court tab has links to Tasmanian Law Handbook. The Going to Court tab also provides information on legal advice, costs, and court etiquette. The website links to an information sheet on what court staff can and cannot do.</td>
<td>Law Society of Tasmania referral service. Find: <a href="https://www.tas.gov.au/service/legal-advice/community-legal-services">Community Legal Assistance in Tasmania</a> More information about discrimination is found on the Equal Opportunity Tasmania website.</td>
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<td>Tasmanıa</td>
<td>Anti-Discrimination Tribunal of Tasmania</td>
<td>The Anti-Discrimination Tribunal website contains a information about its processes. The information is generally written for the SRL, as legal representation is not expected, and the website notes that directions conferences are relatively informal and have been designed to be straight forward.</td>
<td>More information about discrimination is found on the Equal Opportunity Tasmania website.</td>
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<tr>
<td>Tasmanıa</td>
<td>Asbestos Compensation Tribunal of Tasmania</td>
<td>The website for the <a href="https://www.asbestoscompensationtas.com.au">Asbestos Compensation Tribunal</a> states on the front page that the information on the website is of a general nature and not an exhaustive statement of the law. Further, tribunal staff can assist with the practices and procedures but cannot provide legal advice. Parties to the proceeding may be represented with approval by the Tribunal but notes that some matters are relatively simple and many people feel that they do not require a lawyer at a hearing. Matters that involve confusing or complex medical or legal issues may prefer a lawyer.</td>
<td>More information about discrimination is found on the Equal Opportunity Tasmania website.</td>
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<td>Tasmanıa</td>
<td>Health Practitioners Tribunal of Tasmania</td>
<td>The <a href="https://www.tas.gov.au/service/magistrates-court/going-to-court">Health Practitioners Tribunal</a> website is similar in format to the Resource Management and Planning Appeal Tribunal, both are located in the Department of Justice website. It contains information about processes at the tribunal.</td>
<td>More information about discrimination is found on the Equal Opportunity Tasmania website.</td>
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<tr>
<td>Tasmanıa</td>
<td>Resource Management and Planning Appeal Tribunal of Tasmania</td>
<td>The <a href="https://www.tas.gov.au/service/magistrates-court/going-to-court">Resource Management and Planning Appeal Tribunal</a> contains information about tribunal processes and suggests it is up the person whether they have legal representation or not depending on whether the person believes they are able to prepare and present their case.</td>
<td>More information about discrimination is found on the Equal Opportunity Tasmania website.</td>
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<td>South Australia</td>
<td>Magistrates' Court of South Australia</td>
<td>On the <a href="https://www.sacs.qld.gov.au/magistrates-court">Magistrates Court of South Australia</a> webpage there is a tab 'represent yourself' which provides info for SRLs on: • legal aid; • being charged with a criminal offence; • civil claims; • development appeals; • wills and probate; • intervention orders (including domestic violence orders)</td>
<td>The <a href="https://www.sacs.qld.gov.au/magistrates-court">Legal Services Commission of South Australia</a> provides free legal advice and minor assistance over the phone and in face to face appointments. The webpage contains a large number of well-written publications containing legal information on a range of legal topics. For example, The <a href="https://www.sacs.qld.gov.au/magistrates-court">Motor Vehicle Accident Kit</a> to assist people who want to handle their own claim for the repairs to their vehicles as the result of an accident.</td>
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<td>Under the civil claims tab there is more detailed information about representing yourself in small civil claims (the webpage notes that you can get legal help preparing the matter but legal representatives are not permitted to appear for SRLs unless the Court gives permission) and mediation. The Registry Online Manual provides information about all processes that can be conducted online including in relation to minor and general civil claims. There is a flowchart of proceedings for minor civil claims also. For General Civil Claims ($12,001-$100,000), the webpage states that it is advisable to get legal advice but it is by no means essential. The page also states ‘If you have not been involved in a court process before, it is likely you will get confused at some stage. Don’t feel embarrassed if you are not sure what is going on or what you should be doing. You can always contact the court registry for procedural assistance but note they cannot give you legal advice or opinions.’ Links are provided to Legal Aid. There is information about court procedures provided. The information is directed at the SRL and written in plain English to a degree, but may still be hard to understand for some SRLs. The court website is not intuitive or easily navigable.</td>
<td>It also publishes resources such as the Law Handbook and 24Legal an online resource that provides legal information in plain English. There is also a Legal Chat service available from the front page of the Legal Services Commission website. South Australian Community Legal Centres provide legal advice, casework and some legal representation services</td>
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<td>District Court of South Australia</td>
<td>The information for SRLs on the District Court of South Australia website is very limited for civil claims over $100,000. The webpage simply states that it is advisable that you seek legal advice before lodging documents if you believe your claim is over $100,000.</td>
<td>JusticeNet SA is a not-for-profit legal service that provides free legal help to people who cannot afford legal representation or get help elsewhere. The service provides:</td>
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<td>• a Self Representation Service;</td>
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<td>• a Pro Bono Referral Service;</td>
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<td>• legal advice and representation for Refugees and Asylum Seekers</td>
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<td>The Self-Representation Service is only available for civil actions in the District and Supreme Courts of SA and the Federal Court of Australia and Federal Circuit Court of Australia. The Service provides clients with legal advice, help drafting documents, correspondence, court forms; assistance preparing for court, and advice about other options for resolving disputes. But does not take on conduct of a matter or represent the SRL in court. The JusticeNet SA Annual Report 2017 reported that it assisted 823 people in the 16/17 financial year: 536 people receiving one-off assistance and 287 receiving ongoing assistance.</td>
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<td>Supreme Court of South Australia</td>
<td>The information for civil claims in the Supreme Court of South Australia above $100,000 is the same as that for the District Court.</td>
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<td>South Australian Civil and Administrative Tribunal (SACAT)</td>
<td>The SACAT website provides information for SRLs regarding procedures and the different jurisdictions of the tribunal. SACAT, like other tribunals, is designed to enable and encourage parties to represent themselves. On the Our Commitment to You page SACAT notes that it aims to:</td>
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<td>• be accessible and responsive to your needs</td>
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<td>• process and resolve your dispute as quickly as possible</td>
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<td>• use language we can all understand</td>
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<td>• be as flexible as possible</td>
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<td>• use alternative dispute resolution procedures wherever appropriate</td>
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<td>• keep costs to a minimum</td>
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<td>• promote the best principles of public administration, including independence, natural justice and procedural fairness, quality and consistent decisions, and transparency and accountability.</td>
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<td>It further states: We will:</td>
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<td>• treat you with respect, courtesy and professionalism</td>
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<td>• provide you with information on how SACAT works, our processes and processing timeframes</td>
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<td>• assist you in completing electronic forms and understanding processes, fees and other relevant information</td>
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<td>• provide a fair and impartial hearing</td>
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<td>• deliver decisions in easy to understand language and in a timely fashion</td>
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<td>• be flexible as to how we communicate with you</td>
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<td>• refer you to appropriate contacts for other support / advice areas relevant to your enquiry where possible</td>
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<td>Much of the procedural information is found under the Bringing a Case page.</td>
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<td>The website is written in plain language and appears easy to navigate.</td>
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<td>Environment Resources and Development Court of South Australia</td>
<td>The Environment Resources and Development (ERD) Court is a specialist court dealing with disputes, and enforcement of laws relating to the development and management of land, the natural and built environment and natural resources.</td>
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<td>On the front page of the website, the Court states that ‘many people who appear in the court are self represented and the court is committed to making sure people can access its services.’</td>
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<td>The website contains a number of videos regarding completing a notice of appeal, how to apply for, what to expect in an out of time hearing, how to find the court.</td>
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<td>A Guide to Representing Yourself in an ERD Court Hearing is available on the front page of the website – it is 3 pages long and covers the basic procedural information.</td>
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<td>There are a series of webpages on process such as Lodging an Appeal, Joining as a party, Preliminary Conference, Attending a Conciliation Conference, Directions Hearing, Getting a Judgment. Appealing to the Supreme Court.</td>
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<td>The website is relatively simple and easy to follow with some use of plain language.</td>
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<td>The key starting page for the SRL is the What you can expect page which steps through the common stages that a matter will likely go through (unless a matter is resolved) including pre-conciliation, initial directions hearing, conciliation conference, settlement conference, mediation, hearing and determination, referral to an Independent Medical Advisor.</td>
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<td>The website is written for the SRL and is generally written in plain language.</td>
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<td>Western Australia</td>
<td>Magistrates’ Court of Western Australia</td>
<td>There is no information specific to SRLs in civil matters that is immediately evident on the front page of the Magistrates Court of Western Australia website. However, there is a guide for representing yourself in criminal matters.</td>
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<td>To link to information for SRLs, the user clicks on the ‘Types of Cases’ item on the main toolbar, then to Civil Matters. On the Civil Matters webpage there are a large number of fact sheets to guide SRLs through civil proceedings including Understanding civil proceedings and How to commence a general procedure claim.</td>
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<td>Legal Aid WA – the website contains information about the law and a range of legal resources, as well as information about legal aid services. The website contains the Community Online Resource Essentials (CORE) which are free online self help guides for representing yourself in WA.</td>
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<td>Law Access is a pro bono legal assistance organisation</td>
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<td>District Court of Western Australia</td>
<td>The District Court of Western Australia has a section of the website dedicated to Representing yourself in criminal and civil matters. Under the Civil matters webpage, some terms are defined, the overview of a general civil case, relevant legislation, and court documents with worked examples are provided. In addition, a Procedure Guide for Unrepresented Litigants in general civil claims has been published which provided detailed information about court procedure. While comprehensive, the document is reasonably technical and may be difficult for some laypeople to follow.</td>
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<td>Supreme Court of Western Australia</td>
<td>On the Supreme Court of Western Australia website there is a section for Self-Represented Persons, not easily found from the front page, under Court Business which provides some very limited information for SRLs. This includes information on the following topics:</td>
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<td>• The People in Court</td>
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<td>• What happens in Criminal and Civil Trials</td>
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<td>Family Court of Western Australia</td>
<td>The website of the Family Court of Western Australia contains a Self Represented Litigants handbook, under the Legal Resources tab, which is not immediately evident from the front page of the website. On the Self Represented Litigants Handbook page, the Court states: Many people are unable to afford a lawyer to help them to resolve family disputes. They can be at a disadvantage because the law is complicated and court processes are sometimes difficult to understand. This booklet is designed to help those people who do not have a lawyer to present their cases in the Family Court of Western Australia. It is not a substitute for competent legal advice, but it is hoped the information provided will make it easier for you to navigate through the court system. Judges and Magistrates must always remain impartial and not appear to help one side of a dispute to the disadvantage of the other. Whilst the Judge or Magistrate can provide some (very limited) assistance, it is expected that each party who does not have a lawyer will have tried their best to become familiar with this booklet before coming to Court. The Handbook is two separate documents: one dealing with Children’s Cases and one dealing with Property cases. The emphasis in the handbooks is on having legal representation, particularly at trial. A range of places that SRLs can go for advice are listed in the Handbooks. The Family Court of WA Case Management Guidelines are also relevant and make reference to SRLs.</td>
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<td>State Administrative Tribunal Western Australia</td>
<td>The SAT WA website contains a wide range of material about the tribunal processes and the types of matters heard in the SAT WA. The website states that the approach of the tribunal is informal, flexible and transparent to enable parties to conduct the proceeding themselves, or with the assistance of a lawyer or a person with relevant experience. There are a range of information sheets on different topics describing tribunal processes. The tribunal uses the SAT application wizard to enable applicants to apply online. The website uses plain English in places but the majority of the website is not addressed to the SRL, rather is in the third person, eg ‘the applicant must give a copy of the application’, as opposed to ‘you must give a copy of the application’.</td>
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<td>WorkCover Western Australia Conciliation and Arbitration Services</td>
<td>Workcover WA have webpages focussed on resolving a dispute, including conciliation and arbitration services. The webpages are written to the individual, using first person. A diagram shows how the process works. On the website and the guides to the process, WorkCover WA suggests that workers’ compensation disputes can be complex so it is recommended the person seek advice before applying for conciliation or arbitration. The material states, while it isn’t essential, the majority of parties using the conciliation and arbitration services have representation. The guide then provides suggestions regarding finding a lawyer or a registered agent, or seeking advice from their union.</td>
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| ACT                         | Magistrates’ Court of the Australian Capital Territory | There is no specific information for SRLs on the Magistrates’ Court of ACT website, though some material in the criminal jurisdiction is written for the layperson in the first person, eg the Frequently Asked Questions. In the civil jurisdiction, the material is written in the third person, ie, ‘the parties must...’, and parties are referred to as plaintiff and defendant. The language is not plain English and uses technical terminology. Procedural information covered includes:  
  - Commencing a civil action  
  - Guide to enforcement of judgments  
  - How to serve a redirection order | JusticeConnect provides a Self Representation Service in ACT at the Federal Court or the Federal Circuit Court. The website also contains a range of fact sheets for SRLs on various topics. JusticeConnect also coordinates pro bono legal assistance through its Public Interest Law Service. Legal Aid ACT provides community legal education sessions on range of topics and publications on different legal information topics. |
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| Supreme Court of the Australian Capital Territory | The **Supreme Court of the ACT** website contains [Guidelines for Self-Represented Litigants Conducting Appeals](https://www.act.gov.au/supreme-court/guidelines-for-self-represented-litigants-conducting-appeals) which is clearly accessible from the front page of the website. There are two pages with different guidelines:  
  - Guidelines for SRLs conducting Appeals to the ACT Court of Appeal  
  - Guidelines for SRLs conducting appeals to the Supreme Court from the Magistrates Court  
  Both are not a separate publication but a webpage that covers the following topics:  
  - On filing the Notice of Appeal  
  - Ordering the transcript  
  - The Appeal Index  
  - Setting the draft Appeal Index  
  - Costs (civil appeals)  
  Under the Guidelines page there is a tab to a page on Legal Advice which explains that officers of the Court can not give legal advice and states 'The Court recognizes the right of people to act for themselves. Acting for yourself means, however, that you take upon yourself the same responsibility as would a solicitor acting for you.' Organisations that may provide legal assistance are listed.  
  Other information that may be relevant to SRLs are the Frequently Asked Questions page and the Court Etiquette page. | The ACT Law Society [Legal Advice Bureau](https://www.act.gov.au/act-law-society) provides free legal advice to members of the public.                                                                                                                                                                                                                                        |
| ACT Civil and Administrative Tribunal (ACAT)  | The ACAT webpage contains a number of subpages, one of which is titled 'What to expect at ACAT'. This page contains information about court etiquette, the sorts of disputes that can be determined by ACAT. Once on this page links to information about Legal Advice Assistance, guides to parties can be found for:  
  - mediation,  
  - conferences,  
  - directions hearing,  
  - what to expect at hearing  
  - what to expect at a conference and immediate determination  
  There is also a detailed FAQ section which covers a lot of material relevant to SRLs. | The ACAT webpage contains a list of all free or low cost legal assistance services available in the ACT.                                                                                                                                                                                                                                                                      |
| NT          | Northern Territory Local Court                  | The **Local Court of Northern Territory** has a clearly identifiable area of the website dedicated to unrepresented parties. The information is helpful though the website and information slightly dated and better presentation in the form of spacing of text, defining terms and use of plain language would make the information more accessible. Although there is a Legal Jargon page that defines some terms, these are limited. The webpage also contains information pamphlets for Domestic Violence Orders. Under the Unrepresented Parties, there are links to:  
  - Information about going to court  
  - Domestic Violence Information Pamphlets  
  - Understanding court orders  
  - Court etiquette  
  - Legal Jargon  
  - Court decisions  
  - Daily Court lists  
  - Court transcripts  
  - Forms and Fees  
  - Courts Library.  
  Under Legal Information, there links to the:  
  - Northern Territory Law Handbook – an easy to read guide to law in the NT  
  - LawinfoNT – a website with plain language information about the law. The topics of law covered include: housing, money, cars and driving, family, court, domestic violence. Links to legal help are also provided. The website also has a page on Plain Language Guidelines.  
  - Community legal information – including a resource on Australian law for new arrivals which covers a range of different legal topics and includes some videos. | The Northern Territory Legal Aid Commission website contains webpages on legal information, going to court, and legal aid. The Going to Court section provides information about criminal duty lawyers, family duty lawyers and domestic violence duty lawyers. The website contains a range of publications on topics of law relating to relationships and children, police crime and court, neighbourhood, young people, cars and driving, domestic violence, Australian law, and legal aid services.  
  Under Legal Information, there links to the:  
  - Northern Territory Law Handbook – an easy to read guide to law in the NT  
  - LawinfoNT – a website with plain language information about the law. The topics of law covered include: housing, money, cars and driving, family, court, domestic violence. Links to legal help are also provided. The website also has a page on Plain Language Guidelines.  
  - Community legal information – including a resource on Australian law for new arrivals which covers a range of different legal topics and includes some videos. |
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<td>Supreme Court of the</td>
<td>The Supreme Court of the NT website contains a handbook for SRLs in civil matters and in criminal matters. The civil guide provides information on court processes and an appendix of common legal terms.</td>
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<td>Northern Territory</td>
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<td>Civil and Administrative Tribunal of the Northern Territory (NTCAT)</td>
<td>The NTCAT website is part of the Department of Attorney General and Justice website. It contains a publication entitled 'General Information – How NTCAT will deal with your matter.' Other sections of the website relevant to SRLs for providing general information include the matter types/jurisdiction page, the 'how are matters dealt with by NTCAT?' page, the 'making an application' page. There are a number of factsheets in the Publications and Forms section of the website. The presentation of material may be difficult to read and understand for many SRLs: the text is closely spaced, it uses technical language, the text is not written to the SRL in first person, rather talks in the third person, limited use of visual aids and those used are complex. A person without good literacy may struggle to understand the information. In contrast, on the new NT government website there is information on the NTCAT also. The information is not as extensive as the first website but still contains a large amount of material which is easy to read and written in plain language. It may be that the two websites are currently available for a period of transition and that the newer website will replace the old.</td>
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<td>Mental Health Review Tribunal of Northern Territory</td>
<td>The Mental Health Review Tribunal website is generally written for the consumer who will be attending the tribunal, although it is generally expected that the person will have legal representation. The website is written in plain language and text is well spaced and easy to read. The website states that the person can go ahead with legal representation but that legal representation is recommended. The options are to have a private lawyer, a government appointed lawyer or in some cases the tribunal will appoint a private lawyer and cover the costs of legal representation.</td>
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| Commonwealth           | High Court of Australia                    | There is no obvious place on the High Court of Australia website for information for SRLs. In the Information Sheets section of the website under Registry there is an information sheet on 'How to commence a civil special leave application if you are representing yourself.' The information sheet contains complex information but it is relatively well set out. SRLs who have reached the High Court are more likely to be familiar with court processes than SRLs who are appearing self-represented for the first time so may be able to understand the information presented. Other information sheets include:  
  - How to commence a criminal special leave application if you are representing yourself  
  - Information about applications to show cause  
  - Information on preparing application books  
  - Information on preparing appeal books  
The Registry Service Charter sets out the role of Registry staff including that it is not a function of Registry to provide legal advice. The website contains extensive legal links to court, government and legislation websites. | JusticeConnect provides a Self Representation Service in NSW, Victoria, Tasmania and the ACT at the Federal Court or the Federal Circuit Court. The JusticeConnect website also contains a range of fact sheets for SRLs on various topics. JusticeConnect also coordinates pro bono legal assistance through its Public Interest Law Service. |
| Federal Court of Australia | The Federal Court of Australia website has a section entitled I am a party under which there are subpages:  
  - Help with your legal problem (containing information about court referral to legal assistance under Div 4.2 of the Federal Court Rules and advice to SRLs on how to apply for the court referred legal assistance and useful legal information and a list of organisations who provide legal help in each state.  
  - Learn about court processes: including information on starting a matter, preparing for court, attending court, case management, judgments and orders, and legal costs  
  - Communicating with the Court: including guides for communicating with chambers staff and registry staff | |                                                                                                                |
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</table>
|       |       | • Areas of law – with links to more substantial guides on various areas of law  
• Interpreters | Family Law Council and Family Law Section of the Law Council of Australia have prepared Best Practice Guidelines for lawyers doing family law work (2nd Ed, 2010) |
|       |       | • eLodgment  
• Commonwealth Courts Portal (access to your court files including documents and listing events)  
• Federal law search  
• eCourtroom – hearing of some matters in a virtual environment | JusticeConnect provides a Self Representation Service in NSW, Victoria, Tasmania and the ACT at the Federal Court or the Federal Circuit Court. The JusticeConnect website also contains a range of fact sheets for SRLs on various topics. JusticeConnect also coordinates pro bono legal assistance through its Public Interest Law Service |
|       |       | These online resources may be inaccessible for SRLs without a computer, a smart phone or computer literacy | |
|       |       | • eLodgment  
• Commonwealth Courts Portal  
• Online payments | |
|       |       | The Family Court website also provides online services which appear to be available to SRLs including: | |
|       |       | • eLodgment  
• Commonwealth Courts Portal  
• Federal law search  
• eCourtroom – hearing of some matters in a virtual environment | |
|       |       | These online resources may be inaccessible for SRLs without a computer, a smart phone or computer literacy | |
|       |       | • eLodgment  
• Commonwealth Courts Portal  
• Online payments | |
| Family Court of Australia | The Family Court of Australia website has a clearly identifiable area for information for SRLs accessible from the front page under ‘For public – resources for self-represented litigants’. The menu then directs SRLs to different topics: | |
|       |       | • separated couples and parents;  
• migrants, refugees and language support  
• family violence  
• grandparents and other family members  
• kids and young people (divided by 5-8 year olds/9-12 year olds/teenagers)  
• people with disabilities  
• indigenous Australians  
• rural and regional Australians  
• mental health and emotional wellbeing | |
|       |       | Within each topic is a range of information for SRLs including information about procedure and going to court, tips for your court hearing, among other matters. There are a wide range of ‘How do I…’ topics and webpages that provide information for SRLs that are accessible from the front page of the website. Online services include: | |
|       |       | • Livechat  
• Commonwealth Courts Portal  
• Online payment  
• Proof of divorce  
• LawTermFinder - which is a plain language translation tool of the most common terminology used in the family court | |
| Federal Circuit Court of Australia | The Federal Circuit Court of Australia has a website that is identical in design to the Family Court of Australia website. It has a clearly identifiable area for information for SRLs accessible from the front page under ‘For public – resources for self-represented litigants’. The menu then directs SRLs to different topics: | |
|       |       | • Daily Court Lists  
• How do I…  
• General Federal Law  
• separated couples and parents;  
• migrants, refugees and language support  
• family violence  
• grandparents and other family members  
• kids and young people (divided by 5-8 year olds/9-12 year olds/teenagers)  
• people with disabilities  
• indigenous Australians  
• rural and regional Australians  
• mental health and emotional wellbeing | |
|       |       | Under the ‘How Do I…’ page there is information on Divorce, Commonwealth Courts Portal, Applications and orders, Service, Breaches and non-compliance and for lawyers. The How do I’s are also accessible from the front page of the website. There are a range of online services including: | |
|       |       | • Commonwealth Courts Portal  
• eLodgment  
• Online payments | |
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<td>• Proof of Divorce</td>
<td>In NSW, Qld, SA, WA and Vic, AAT has established legal advice schemes with legal aid commissions and community legal centres for a solicitor to attend the AAT and provide advice and minor assistance to SRLs in some cases such as Centrelink and this may extend to representation in limited cases.</td>
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<td></td>
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<td>• Federal Law Search</td>
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<td>• LawTermFinder – which is a plain language translation tool of the most common terminology used in the family court.</td>
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<td>• Livechat is available.</td>
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<td>Divorce can also be applied for using an online form.</td>
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<td>The AAT website is geared primarily towards SRLs. It is clearly stated that legal representation is not required but that people may choose to have legal representation (or other representative) if they wish to. The main toolbar has links to information: About the AAT; Applying for a Review; Steps in a Review, decisions, resources.</td>
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<td>Under the Applying for a review section of the website each jurisdiction within the AAT has a separate page.</td>
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<td>Each area of the AAT has a section on the website that explains the steps of review, how to apply for a review, the ability to apply online, links to agencies that can assist the SRL with their application and prepare for hearing.</td>
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<td>The website includes factsheets and forms.</td>
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<td>There are extensive guides on the various areas of jurisdiction of the AAT such as Social Services, migration, veterans.</td>
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<td>There are also several short video guides (created in 2017) that explain about what the AAT does, how to apply for a review, the process after an application is lodged, attending a conference, attending a hearing and information about decisions. Explanations are clear and assisted with text on the screen.</td>
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<td>Explains privacy and sharing of information.</td>
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<td>The AAT provide an Outreach service where a member of registry staff contacts the SRL to explain the review process and provide an opportunity for the SRL to ask questions.</td>
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<td>This may include providing information about organisations that can provide legal advice or assistance and to ask whether the SRL requires an interpreter or any other assistance.</td>
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<td>In NSW, Qld, SA, WA and Vic, AAT has established legal advice schemes with legal aid commissions and community legal centres for a solicitor to attend the AAT and provide advice and minor assistance to SRLs in some cases such as Centrelink and this may extend to representation in limited cases.</td>
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<td>The AHRC investigates and resolves complaints of discrimination, harassment and bullying based on a person’s sex, disability, race, age and other matters.</td>
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<td>From the frontpage of the AHRC website there are a two points through which SRLs can reach information about Complaints.</td>
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<td>Complaints are resolved through conciliation and the website provides information about making a complaint and the steps involved in the complaint process.</td>
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<td>The Pathways to Resolution page contains a video explaining the conciliation process.</td>
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<td>A wide range of legal resources relevant to the AHRC jurisdiction is also housed on the website.</td>
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<td>The public can access the National Information Service which provides information and referrals.</td>
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<td>A complaint can also be made online.</td>
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<td>The Fair Work Commission website provides substantial resources for SRLs and uses a combination of written information via benchbooks, fact sheets and guides, videos which explain about making an application and the application process. The website also uses quizzes to help SRLs assess their eligibility to make an application.</td>
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<td>The Fair Work Commission has an online lodgement service.</td>
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<td>Information about conduct and behaviour is also available. To assist SRLs familiarise themselves with the Fair Work Commission there is a virtual video tour of the Commission also.</td>
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<td>The Fair Work Commission has conducted two pilot programs for SRLs:</td>
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<td>General protections assistance for self-represented parties pilot</td>
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<td>Unfair dismissal pro bono pilot program – now a permanent initiative.</td>
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<td>The NNTT contains information for SRLs about making native land title claims. The NNTT provides claimants with assistance and information, but not legal advice. The website outlines the type of assistance that is available.</td>
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<td>The types of assistance the NNTT may provide include:</td>
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<td>• assistance with ILUA negotiations</td>
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|              | State Court                          | • help to negotiate the withdrawal of objections to the registration of an area or alternative procedure ILUA  
• assistance in negotiating agreements to settle native title applications  
• assisting representative bodies in indigenous dispute resolution functions  
• assistance to Prescribed Bodies Corporate  
• assistance in negotiating statutory access agreements or mediation of statutory access  
• training, statistics and presentations.  
The types of assistance the Registrar may provide include:  
• information on native title and the native title process  
• assistance in the preparation of a native title application  
• preliminary assessments of draft native title determination applications and draft ILUAs  
• details of native title applications and ILUAs  
• mapping services  
• land tenure information  
• searches of the Registers.  
The website also provides resources regarding assistance with applications.  
Superannuation Complaints Tribunal (SCT) | The SCT website is written directly to the layperson, is relatively user friendly and easily navigable. It asks questions on the front page such as “How can the Tribunal help me?” and “How do I make a complaint?” and links to an online complaint form. The information presented is in densely spaced text that some people may find difficult to understand. Terminology is used a lot.  
The diagram showing the lifecycle of a complaint is likely to be useful to SRLs.  
The website contains information about the various steps in the complaint process.  
An extensive FAQ section covers many questions relating to the complaint process.  
Legal representation is not expected and parties must apply to the SCT if they wish to be legally represented.  
Guidelines and a guide for attendance at the conciliation process are available on the website.  
Veterans' Review Board (VRB) | The VRB website is written directly to the layperson applicant and contains information about jurisdiction and process. Applicants can be legally represented but are not expected to be. The language used for the most part is plain English.  
The website contains a number of factsheets:  
• Overview  
• Representation at hearings  
• Cost of hearings  
• How can I prepare my entitlement case or liability case  
• Assessment cases  
• Summoning witnesses or documents.  
New Zealand Supreme Court of New Zealand | The Supreme Court of New Zealand webpage which is a subpage of a broader Courts of New Zealand webpage. There is no specific information for SRLs on the Supreme Court webpage. General information about the court system and preparing for court can be found on the broader Courts of New Zealand but information is limited. Some information for SRLs is found on the Ministry of Justice of NZ website but not for the Supreme Court.  
Court of Appeal of New Zealand | The Court of Appeal of New Zealand webpage which is a subpage of a broader Courts of New Zealand webpage. There is no specific information for SRLs on the Court of Appeal webpage. General information about the court system and preparing for court can be found on the broader Courts of New Zealand but information is limited.  
• The Community Law Centre in New Zealand provides legal information and legal advice on a wide range of legal matters. The Community Law Centre also hold legal education workshops. The website houses the Community Law Manual. The website also contains a range of legal letter templates to help the public communicate and enforce their legal rights.  
• Complaint Line – is a gateway website for the many dispute resolution agencies in New Zealand  
• Citizens Advice Bureau – provides a range of legal information on its website including information on complaints and disputes.  
• Legal Aid – information about legal aid is found on the Ministry of Justice – it does not contain legal information.  

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<td>Some information for SRLs is found on the Ministry of Justice of NZ website but not for the Court of Appeal.</td>
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<td>High Court of New Zealand</td>
<td>The High Court of New Zealand webpage which is a subpage of a broader Courts of New Zealand webpage. There is no specific information for SRLs on the High Court webpage itself. Detailed information for SRLs appearing in the High Court can be found on the Ministry of Justice of NZ website under Going to court without a lawyer which contains the following topics:</td>
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<td>• Starting a proceeding</td>
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<td>• Defending a proceeding</td>
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<td></td>
<td></td>
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<td>• Documents you need to file</td>
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<td>• Fees</td>
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<td>• Where to file documents</td>
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<td>• Serving documents</td>
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<td>• Review of registrar’s decision</td>
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<td>• What to expect in the courtroom</td>
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<td>• Evidence – statements of fact made to the court</td>
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<td>• Costs and disbursements</td>
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<td>• Documents – forms and templates</td>
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<td>• Templates</td>
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<td>• New Zealand’s constitutional system</td>
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<td>The Ministry of Justice webpage also contains a guide for representing yourself in a criminal case in the High Court.</td>
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<td>District Court of New Zealand</td>
<td>The District Court of New Zealand has its own webpage. However under the Ministry of Justice webpage there is information on representing yourself in a civil case in the District Court, with the following topics:</td>
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<td>• Starting a proceeding</td>
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<td>• Defending a proceeding</td>
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<td>• Requirements for filing documents</td>
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<td>• Fees</td>
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<td>• Where to file documents</td>
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<td>• Serving documents</td>
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<td>• Review of registrar’s decision</td>
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<td>• What to expect when you appear in court</td>
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<td>• Evidence – statements of fact</td>
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<td>• Costs and disbursements</td>
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<td>The Ministry of Justice website also contains webpages with information about the civil process including resolving a problem without going to court and about the court process.</td>
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<td>Family Court of New Zealand</td>
<td>The Ministry of Justice provides guidance to representing yourself in the Family Court. There is further information on 'What to Expect at Family Court' with a video explaining the what the Family Court does. There are a range of other videos explaining different aspects of the court process and jurisdiction. The page on Representing yourself in the Family Court provides links to forms to apply to be assisted by a Lay Assistant. The representing yourself page also has a number of videos.</td>
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<td>Employment Court of New Zealand</td>
<td>Much of the content on the Employment Court of New Zealand website is written directly to the layperson. It has subpages regarding information and guidance; apply to the Employment Court; and what to expect at the Employment Court. Under the Apply to the Employment Court webpage there is a flowchart that steps SRLs through the process with links to additional information. The What to expect at the Employment Court covers information about:</td>
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<td>• Defend a challenge or a claim</td>
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<td>• How document disclosure works</td>
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<td>• Other interlocutory applications</td>
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<td></td>
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<td>• Before a hearing is held</td>
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<td>• What happens during a hearing</td>
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<td>• After the hearing</td>
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<td>• Judgment delivery expectations</td>
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<td>Under the Information and guidance webpage, there is a link to a subpage on Professional help.</td>
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<td>Environment Court of New Zealand</td>
<td>The Environment Court of New Zealand states that you do not need a lawyer and that you can represent yourself. The website is written directly for the layperson SRL.</td>
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<td>State</td>
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|       |       | **However, under the Representing Yourself section of the website, there is very limited information apart from links to finding legal advice and applying to the Environmental Legal Assistance Fund. An overview of the Environment Court’s processes covers:**  
  - Lodge your appeal or application  
  - Get involved in a proceeding  
  - Before the hearing  
  - At the hearing  
  - After the hearing  
  - Mediation. | **Maori Land Court**  
  - The [Maori Land Court](#) is written for SRLs with much of the information on the website addressed directly to the SRL. Information includes:  
    - Apply to the Court: File your application; what to expect after filing your application; File an appeal in the Maori Appellate Court; fees and forms. |
|       |       | **Employment Relations Authority** uses plain language and written directly for the layperson. It provides clearly written information about what the ERA does, the steps in the process, and what happens after the determination. It also provides information about solving an employment relationship problem. People appearing before the ERA can be represented by:**  
  - a union  
  - an employers’ association  
  - a lawyer, either through a law firm or a community law office  
  - an employment relations advocate  
  - a family member  
  - a friend.  
  - The ERA website contains information about the main steps in the process and practice notes related to steps to be taken and papers [running a case](#) in the ERA and [effective advocacy](#).  
  - Four videos are viewable on the ERA website on ‘Taking matters to the ERA’ | **Tribunals**  
  - There are approximately 20 [tribunals](#) in New Zealand. Most of the tribunal websites sit under the Ministry of Justice website on the Tribunals page and are similarly formatted and contain similar levels of information. The websites are written directly to the layperson SRL.  
  - The [Disputes Tribunal](#) (which determines small claims up to $15,000 or $20,000 if all parties agree) website contains more extensive information about making a claim. Parties are self-represented and lawyers not permitted so the website is written for the layperson SRL, is easily to navigate and uses plain language. It has webpages on how to make a claim and what to do when a claim is made against you and going to a hearing. The [going to a hearing](#) section contains information on:**  
    - What to expect at a hearing  
    - Prepare for a hearing  
    - Decision in your favour  
    - Decision not in your favour  
    - Apply for a rehearing  
    - Apply for an appeal  
    - Get a text message reminder.  
  - Links to the Citizens Advice Bureau, Community Law Centre, and information about interpreters, language and disability access is provided. |