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Self-representation

*A self-represented litigant (**SRL**) is a litigant who is either fully or partially unrepresented by a lawyer at any stage during the litigation process. The number of SRLs has increased considerably over the last two decades and is posing a significant challenge to the delivery of justice in Queensland and wider Australia. This Research Brief provides an account of SRLs as a growing and significant class of litigants. The Brief also provides an outline of some of the more recent initiatives that courts have taken to accommodate the needs of SRLs and lists a number of recommendations that have been suggested for consideration.*

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EXECUTIVE SUMMARY

A person has a fundamental right to represent him or herself before any court or tribunal in Australia. However, a person does not have a fundamental right to legal representation. This combination has enabled litigants who cannot afford legal representation to represent themselves before a court. The problem is that the Australian justice system, which is predicated on the adversarial system of litigation, is not designed to accommodate and deliver justice to a litigant who is not represented by a legally qualified professional.

Self-represented litigants (**SRLs**), as they are commonly called, have grown significantly in numbers over the last two decades or so, and today, represent a serious challenge to the way justice is delivered in Queensland and wider Australia. The issue of SRLs therefore receives ongoing media and other attention in Queensland, as it does in jurisdictions across Australia: **Section 2**. It has also become an issue of public concern in overseas jurisdictions: **Section 2**.

The number of SRLs is growing in what appears to be a national trend. Specifically, in relation to Queensland, the trend is prevalent in the Court of Appeal which has experienced a significant increase in SRLs in relation to civil litigation: **Section 3**.

Whilst data collection is still fairly rudimentary and there is therefore not much known about SRLs, a number of observations can be made that go some way to profiling the SRL as a separate group of litigants. These observations are outlined in **Section 4**.

The problems that are commonly associated with self-representation usually stem from the inherent disadvantages that self-representation entails and the administrative burden that SRLs impose on the court system itself. These issues are discussed in **Section 5**.

There are a number of reasons why people represent themselves in litigation and these are considered in **Section 6**.

Most courts have recognised SRLs as a legitimate group of litigants and have taken some initiative to accommodate for their needs. **Section 7** provides summary points on some of these initiatives.

Section 8 provides a brief overview of some of the recommendations that have been published in a number of relatively recent reports on self-representation.

Appendix A provides a brief outline of the more significant publications that have been used to compile this Brief. Some relevant newspaper articles are reproduced in **Appendix B**.

1 INTRODUCTION

A self-represented litigant (**SRL**) is a litigant who is either fully or partially unrepresented by a lawyer at any stage during the litigation process. Although self-representation is a relatively contemporary issue, it is a long established principle of law that a person has a fundamental right to represent themselves in litigation before a Queensland and a Federal Court.[1] Inhibitive costs of litigation and a changing legal landscape have meant that more and more litigants have had to resort to this right. SRLs have hence become a significant and growing group of litigants presenting themselves as an ongoing issue of public concern.

The purpose of this Brief is to provide a brief account of SRLs as a growing concern in Queensland and Australia generally. A profile of the SRL will be given followed by an outline of the issues that are generally thought to be symptomatic of self-representation. The Brief will then outline some of the most commonly stated causes for the growing number of SRLs, followed by a brief summary of some of the more recent court initiatives and recommendations on self-representation.

2 BACKGROUND

Self-representation, as an issue of public concern, is a relatively recent phenomenon emerging in the early/mid 1990s as part of, and integral to the wider debate on issues of equity and justice in the Australian court system. Since then, a range of interested parties have expressed concern, conducted research into, and/or published commentary on SRLs. These include the courts themselves, individual judges, academics, government departments, peak legal bodies, law reform commissions and other bodies involved in the provision of legal aid and other legal services. The federal court system has been the focal point of much of this interest.

Appendix A provides a brief outline of the more significant reports and publications that have been used to compile this Brief.[2] Together, these publications amount to a unified recognition that SRLs are a growing and significant group of litigants that pose special challenges to traditionally held views of justice in an adversarial based court system such as Australia's.

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[1] *Collins (aka* Hass*) v R* (1975) 133 CLR 120; *Cachia v Hanes* (1994) 179 CLR 403; section 78 of the *Judiciary Act 1903* (Cth); section 209 of the *Supreme Court Act 1995* (Qld)

[2] For an alternative list of the main reports from 1994-2002, see Appendix 3 – Reports Summary of The Law Council of Australia (in conjunction with Australasian Institute of Judicial Administration, National Legal Aid and Aboriginal and Torres Strait Islander Legal Services) *Erosion of Legal Representation in the Australian Justice System*, Report, February 2004, p 2, downloaded 26 March 2008 from website at http://www.lawcouncil.asn.au/

There would appear to be a commensurate amount of concern expressed on the issue of SRLs in overseas jurisdictions such as the United Kingdom, Canada and the United States.[3] In Canada, the Chief Justice of Nova Scotia Court of Appeal noted that:

> *[l]itigants representing themselves at some stage of a court action appear to be an increasing phenomenon in Canadian jurisdictions as is the case in many common law countries…[which is evidenced by] …the interest which the topic is garnering from judicial organizations and conferences, government officials and bar societies in many Commonwealth countries.*[4]

Specifically in relation to Queensland, although there does not appear to be any state review or commissioned work directly on SRLs, the issue has become a media item that receives ongoing coverage,[5] as it does at a federal level.[6] The issue of SRLs in Queensland is also addressed on a fairly regular basis in the Queensland Courts' annual reports, research articles[7], and speeches by justices of the Queensland Courts.[8]

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[3] See for example, United Kingdom Department for Constitutional Affairs, *Litigants in Person: Unrepresented litigants in first instance proceedings*, DCA Research Series 2/05, March 2005; Cynthia Gray, *Reaching Out or Overreaching: Judicial Ethics and Self-Represented Litigants*, the State Justice Institute (US), 2005

[4] *The Impact of Self-Represented Litigants on Judges and Court Staff*, paper delivered at the 13th Commonwealth Law Conference, 2003, cited in Australian Attorney-General's Department, *Federal Civil Justice System*, Strategy Paper, December 2003, p 95, downloaded 26 February 2008 from website at www.ag.gov.au

[5] For example, see Mark Oberhardt, 'Decade of Justice', *Courier Mail*, 2 February 2008, p 53; Renee Viellaris, 'Internet DIY slows the courts', *Courier Mail*, 21 February 2006, p 6; Mark Oberhardt, 'Judge has doubts over guilty pleas', *Courier Mail*, 2 May 2005, p 9

[6] For example, see Chris Merritt, 'High Court to be more selective', *Australian Financial Review*, 21 February 2004, p 6; Dennis Shanahan, 'New bid to stop asylum appeals', *Australian*, 27 December 2003, p 1

[7] For example, see J Dewar, B Jerrard & F Bowd, 'Self-representing Litigants: A Queensland Perspective', *The Queensland Lawyer* , 23, December 2002, pp 65-77

[8] For example, see Justice Margaret Wilson, 'Expert Evidence, Self-Represented Litigants and the Evidence of Children', address to Queensland Industrial Relations Commission, Customs House, Friday 2 September 2005, downloaded 25 March 2008 from website at http://archive.sclqld.org.au/ ; Chief Justice Paul de Jersey, 'Legal Educators' State Conference Keynote Address', Parliament House, Friday 13 August 2003 downloaded 25 March 2008 from website at http://archive.sclqld.org.au/ ; Justice Gregory Davies, 'The reality of civil justice reform: why we must abandon the essential elements of our system", paper presented at the 20th AIJA Annual Conference, Brisbane, July 2002, pp 12-14 downloaded 4 March website at http://www.aija.org.au/

3 GROWING TREND

The discussion below serves to highlight a general trend toward self-representation in the Queensland and other courts over the last two decades.

Queensland Courts

In 2008, Chief Justice Paul de Jersey of the Queensland Supreme Court publicly stated that SRLs are "…*an increasing problem*…"[9] The problem is particularly evident in the division of the court that hears appeals (the Court of Appeal) with over 40% of all litigants who appeal a decision in relation to a *civil* matter being self-represented. In relation to *criminal* matters, more than one in three litigants is self-represented.[10] According to Chief Justice Paul de Jersey, the higher rate of self-representation in civil matters is attributed to the fact that legal aid extends only to criminal and not civil matters.[11]

By comparison, the number of SRLs in the division of the court that hears disputes for the first time (the Trial Division) is said to be noticeably lower[12] (although, at the same time, there appears to be an upward trend from 15% in 2002-2003 to 17.6% in 2003-04).[13]

A more significant upward trend is evident in the Court of Appeal Division in relation to civil litigation. Data from the Supreme Court of Queensland's Annual Reports over the reporting periods of 1995/96 to 2006/07 reveals a rising trend of SRLs from 29% in 2000/01 to just over 42% in 2006/07 (Table 1).

In contrast, there does not appear to be a significant growing trend toward self-representation in relation to criminal litigation. For example, there has only been a 2% rise in self-representation over the reporting periods of 2001-02 (32.24%) to 2006-07 (34.3%) (ignoring fluctuations in numbers throughout this period) (Table 2).

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[9] Mark Oberhardt, 'Decade of Justice', *Courier Mail*, 2 February 2008, p 53

[10] See the comment by Chief Justice Paul de Jersey in David Solomon, 'High Court adjusts for go-it-alone litigants', *Courier Mail*, 12 March 2005, p 16

[11] Mark Oberhardt, 'Decade of Justice', *Courier Mail*, 2 February 2008, p 53

[12] Supreme Court of Queensland Report 2006/07, p 24

[13] Chief Justice Paul de Jersey, 'Legal Educators' State Conference Keynote Address', Parliament House, Friday 13 August 2003, pp 3-4, downloaded 25 March 2008 from website http://archive.sclqld.org.au/

Table 1:

	Queensland Supreme Court Annual Report										
	1995/96	**2002/03**	**2003/04**	**2004/05**	**2005/06**	**2006/07**	**1996/97**	**1997/98**	**1998/99**	**1999/00**	**2000/01**
Number of SRLs (Civil only)	16	100	73	69	42	93	11	20	47	68	82
Overall percentage of cases	n/a	39.06%	31.73%	31%	22.58%	42.08%	n/a	n/a	n/a	n/a	29%

Table 2:

	Queensland Supreme Court Annual Report											
	1995/96	**1996/97**	**1997/98**	**1998/99**	**1999/00**	**2000/01**	**2001/02**	**2002/03**	**2003/04**	**2004/05**	**2005/06**	**2006/07**
Number of SRLs (Criminal only)	99	123	74	102	89	78	109	105	119	122	99	94
Overall percentage of cases	n/a	n/a	n/a	n/a	n/a	n/a	32.24%	29.16%	36.06%	34%	33.45%	34.3%

An upward trend is evident in the Queensland District Court. For example, whilst only 4.9% of all parties involved in court filings were SRLs over the financial year 2000/01, this number had jumped to 16.4% over the 2001/02 period.[14] The 2003/04 Annual Report notes a further increase in the number of SRLs.[15]

The Queensland Magistrates Court, being the lowest court and like other Magistrates Courts around Australia, continues to deal with SRLs on a regular basis.

Other Courts

Research indicates, and it is anecdotally accepted, that the number of SRLs has generally increased in courts across Australia.[16] In relation to the Federal Court system, SRLs are now recognised as a significant and growing class of litigants.[17] For example, the Federal Magistrates Court has observed that in the year 2003/04, 32% of applications for divorce were filed by SRLs whilst in the year 2006/07, the figure increased to over 70%.[18] In relation to the High Court, the trend is upwards as depicted by the number of SRLs seeking special leave. In 1992/93, only 5% of litigants seeking special leave were unrepresented;[19] in 1995/96 the number increased to 76 (20%) and then to 510 (58%) in 2004/05.[20] The percentage of SRLs seeking leave or special leave was 63% in 2005/06.[21]

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[14] District Court Annual Report 2000/01, pp 80, 82

[15] District Court Annual Report, p 28

[16] See for example, Hon Justice Robert Nicholson, 'Australian experience with self-represented litigants', *Australian Law Journal*, 77, 2003, pp 820- 826, p 820

[17] Australian Attorney-General's Department, *Federal Civil Justice System*, Strategy Paper, December 2003, p iii, downloaded 26 February 2008 from website at www.ag.gov.au

[18] Federal Magistrates Court Annual Report 2003/04, p 37 and Federal Magistrates Court Annual Report 2006/07, pp 54, 56

[19] High Court Annual Report 2001/02, pp 9-10 of 92

[20] High Court Annual Report 2004/05

[21] High Court Annual Report 2005/06

4 PROFILE

Most jurisdictions do not collect adequate data to enable SRLs, as a separate group of litigants, to be profiled in any meaningful way (eg, plaintiff/respondent, income status, degree of representation, stages of representation and/or legal advice, etc). However, it is well acknowledged that SRLs represent a diverse group of people with varied abilities to represent themselves and with a wide range of needs.[22]

Four other observations are generally made despite the lack of data. Firstly, SRLs are often said to fall within two categories: those that cannot afford representation and do not qualify (or are not aware that they qualify) for legal aid; and those that choose not to have legal representation.[23] Secondly, SRLs are more likely to litigate in the areas of: [24]

- family law
- bankruptcy
- summary criminal matters
- industrial law matters
- matters before the Commonwealth Administrative Appeals Tribunal (eg, taxation, banking and, industrial law matters)
- refugee and immigration matters. For example, immigration matters including asylum-seekers and those appearing against tribunal decisions accounted for 82% of matters filed in the High Court in 2003.[25]

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[22] Australasian Institute of Judicial Administration, *Litigants in Person Management Plans: Issues for Courts and Tribunals*, publication 060, 2001, pp 2-3, downloaded 4 March from website at http://www.aija.org.au/

[23] Australasian Institute of Judicial Administration & the Federal Court of Australia, *Forum on Self-Represented Litigants*, A Report, 2005, p 1, downloaded 4 March from website at http://www.aija.org.au/

[24] Federal Magistrates Court of Australia, *An Evaluation of Services for Self-Represented Litigants in The Federal Magistrates Court*, October 2004, p 3, downloaded 26 March 2008 from website at http://www.fmc.gov.au/; The Australian Law Reform Commission, *The Unrepresented Party*, Background Paper 4, December 1996, pp 3-4 of 20, downloaded 4 February 2008 from website at www.austlii.edu.au/au/alrc/publications; Hon Justice Robert Nicholson, 'Australian experience with self-represented litigants', *Australian Law Journal* 77, 2003, pp 820- 826, p 821; J Dewar, B Jerrard & F Bowd, 'Self-representing Litigants: A Queensland Perspective', *The Queensland Lawyer* , 23, December 2002, pp 65-77, p 65.

[25] Dennis Shanahan, 'New bid to stop asylum appeals', 27 December 2003, *Australian*, p 1

There does not appear to be data available that would provide a breakdown on the areas of law that SRLs are more likely to litigate when using the Queensland court system.

Thirdly, whilst it is difficult to ascertain what proportion of SRLs is partially or fully unrepresented, anecdotal evidence suggests that many SRLs do receive some legal advice and/or representation at some stage during their case.[26]

Lastly, at least in Queensland (with the exception of the Magistrates Court and some tribunals), SRLs are more likely to be unrepresented in the final stages of litigation than the earlier stages. For example, as indicated earlier, there are significantly more SRLs in the Court of Appeal than the Trial Division.[27] A similar pattern of representation has been observed in the Family Court in that SRLs will appear in the final hearing despite being represented at earlier stages.[28]

5 THE PROBLEM

The issue of the SRL has been described by justices of the Queensland Courts as "*…the greatest contemporary challenge…*"[29] and the "*…greatest single challenge for* the *civil justice system at the present time…*"[30] Justice Michael Kirby of the High Court has also stated that the "*[t]he large number of self-represented litigants illustrates an institutional failure in the way we organise legal services in*

[26] For example, research on the Family Court back in 1999 revealed that just over 50% of SRLs sought legal advice at some stage during the conduct of the case: T Matruglio, *The Costs of litigation in the Family Court of Australia – Part Two*, research conducted for the Australian Law Reform Commission cited in Family Law Council, *Litigants in Person*, A Report to the Attorney-General, August 2000, p 27, downloaded 5 February 2008 from website at www.ag.gov.au/

[27] Supreme Court of Queensland Annual Report 2006/07, p 24

[28] Family Law Council, p 5. Although it is noted in Family Court of Australia Annual Report 2006/07, pp 53-54 that this trend seems to have abated in more recent times, possibly due to the increasing complexity of cases.

[29] See the comments made by Chief Justice Paul de Jersey, 'Legal Educators' State Conference Keynote Address', Parliament House, Friday 13 August 2003, p 1, downloaded 25 March 2008 from website at http://archive.sclqld.org.au/, and more recently in Mark Oberhardt, 'Decade of Justice', *Courier Mail*, 2 February 2008, p 53

[30] Justice Gregory Davies, 'The reality of civil justice reform: why we must abandon the essential elements of our system", paper presented at the 20th AIJA Annual Conference, Brisbane, July 2002, p 14 downloaded 4 March 2008 from website at http://www.aija.org.au/ cited with approval by Hon Justice Robert Nicholson, 'Australian experience with self-represented litigants', *Australian Law Journal* 77, 2003, pp 820- 826, p 822.

Australia."[31] Other commentators have expressed equal concern, for example, the Law Council of Australia has stated that self-representation poses a threat to the integrity of the judicial system.[32] Further research indicates that SRLs are widely recognised as a growing and structural problem currently challenging the Australian justice system.[33]

The problems associated with SRLs can be identified as those stemming from the uneven playing field that self-representation usually creates and the extra costs that SRLs impose on the court system.

5.1 UNEVEN PLAYING FIELD

The Australian justice system is based on the adversarial system of litigation which is predicated on the notion that justice is best served by having disputing parties argue their case before a judge; and the party with the best argument wins. Litigation proceeds on the assumption that opposing parties are equally and competently represented by legally trained practitioners and that there is no need for a judge to provide assistance in the preparation and delivery of a case, but simply to preside as an impartial and neutral adjudicator.

The problem with self-representation is that it gives rise to unequal representation. Research indicates that, with few exceptions, representation is relevant to outcome and that the failure rate of SRLs is significant.[34] For example, in relation to litigation before the High Court over a ten-year period from 1992/93 to 2001/02, only 19 of 2,855 or 0.7% of SRLs were successful in their application for special leave (of which only 9 appeals were allowed). In comparison, 607 or 21% of

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[31] Kirby, Michael, 'Favourable verdict on the High Court', *Age*, 5 October 2003, online. See also Chief Justice Murray Gleeson of the High Court, *The State of the Judicature*, speech given at the Australian Legal Convention, Canberra, 10 October 1999, p 13 of 17 downloaded 4 February 2008 from website at www.highcourt.gov.au

[32] The Law Council of Australia (in conjunction with Australasian Institute of Judicial Administration, National Legal Aid and Aboriginal and Torres Strait Islander Legal Services) *Erosion of Legal Representation in the Australian Justice System*, Report, February 2004, p 2, downloaded 26 March 2008 from website at http://www.lawcouncil.asn.au/

[33] Chief Justice Paul de Jersey, 'Legal Educators' State Conference Keynote Address', Parliament House, Friday 13 August 2003, p 1, downloaded 25 March 2008 from website at http://archive.sclqld.org.au/

[34] Australasian Institute of Judicial Administration, *Litigants in Person Management Plans: Issues for Courts and Tribunals*, publication 060, 2001, p 5 downloaded 4 March from website at http://www.aija.org.au/

represented litigants were successful in their application.[35] According to Federal Court statistics, SRLs are more likely to discontinue, more likely to be dismissed, and more likely to have an order to pay costs.[36] This is not surprising given that it is common knowledge that SRLs regularly struggle with such tasks as identifying the pertinent issues, assessing the merits of their case, presenting their case in an objective manner, and understanding and using the law to effectively argue their case and to present their case in accordance with procedural rules (eg, rules of evidence).[37] According to the Chief Justice Paul de Jersey, the adversarial system relies on the ability of a party to argue and advance their case but most SRLs "*…dramatically lack that ability*."[38]

There are some safeguards in place, but these are limited. For example, although a party has a right to a fair trial, this does not translate into a right of legal representation as there is no legal assumption that a trial is unfair if one party has no legal representation.[39] And whilst a judge is obliged to assist a SRL to ensure that the SRL receives a fair trial,[40] this assistance is limited because a judge must be careful not to jeopardise or even be seen to jeopardise her or his position of neutrality and impartiality by providing assistance to one party and not the other.[41]

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[35] High Court Annual Report 2001/02, pp 9-10 of 92.

[36] *Erosion of Legal Representation in the Australian Justice System*, Report, February 2004, p 5, downloaded 26 March 2008 from website at http://www.lawcouncil.asn.au/

[37] See for example, Australasian Institute of Judicial Administration & the Federal Court of Australia, *Forum on Self-Represented Litigants*, A Report, 2005, p 10, downloaded 4 March from website at http://www.aija.org.au/; Australasian Institute of Judicial Administration, *Litigants in Person Management Plans: Issues for Courts and Tribunals*, p 5; The Australian Law Reform Commission, *Managing Justice: A review of the federal civil justice system*, Final Report No 89, 2000, downloaded 4 February 2008 from website at www.austlii.edu.au/au/alrc/publications; The Law Council of Australia, p 15, downloaded 26 March 2008 from website at http://www.lawcouncil.asn.au/

[38] Chief Justice Paul de Jersey, 'Legal Educators' State Conference Keynote Address', Parliament House, Friday 13 August 2003, p 3, downloaded 25 March 2008 from website at http://archive.sclqld.org.au/

[39] See for example, *Dietrich v The Queen* (1992) 177 CLR 292; *Heard v De Laine* [1996] FLC 92-675; *Minogue v HREOC* (1999) 84 FCR 438

[40] See for example, *McPherson v The Queen* (1981) 147 CLR 512; *In Marriage of Johnson* (1997) 139 FLR 384; *In Marriage of F* (2001) 161 FLR 189

[41] Chief Justice Paul de Jersey, p 9

It is therefore widely recognised that the adversarial system of litigation is not conducive to self-representation and gives rise to serious issues of injustice.[42]

5.2 COSTS

For a number of reasons, SRLs impose additional costs on the court system. Firstly, SRLs often lack an understanding of court procedures and require greater assistance from court staff. For example, registry correspondence on SRLs in the Supreme Court of Queensland is approximately three times the norm,[43] whilst in the High Court, SRLs are said to consume approximately 50% of registry staff time.[44] This heavy reliance on non-judicial staff for assistance has the additional cost of exposing the court to greater legal risk of being sued for negligent advice.[45] As such, a number of calls have been made for the enactment of a qualified immunity to cover non-judicial staff.[46]

A SRL's lack of understanding of court procedures and the law inevitably means that court proceedings do not run as efficiently and generally take longer.[47]

Concern has also been expressed that because SRLs are not bound by the same duties that a lawyer owes to a court, the overarching effect of these duties is

[42] See for example the comments of Justice Margaret Wilson , 'Expert Evidence, Self-Represented Litigants and the Evidence of Children', address to Queensland Industrial Relations Commission, Customs House, Friday 2 September 2005, p 2, downloaded 25 March 2008 from website at http://archive.sclqld.org.au/

[43] The Supreme Court of Queensland Annual Report 2005/06

[44] The High Court Annual Report 2001/02, p 9-10 of 92

[45] Australasian Institute of Judicial Administration & the Federal Court of Australia, *Forum on Self-Represented Litigants*, A Report, 2005, pp 2-3, downloaded 4 March from website at http://www.aija.org.au/

[46] Supreme Court of Queensland Annual Report 2005/06, p 20; High Court Annual Report 2001/02, pp 9-10 of 92

[47] Justice Gregory Davies, 'The reality of civil justice reform: why we must abandon the essential elements of our system", paper presented at the 20th AIJA Annual Conference, Brisbane, July 2002, p 14 downloaded 4 March 2008 from website at http://www.aija.org.au/

consequentially watered down.[48] These duties include certain duties of disclosure, a duty not to abuse the court process (restraint on excessive zeal and a duty to conduct the case fairly and reasonably) and a duty to conduct cases efficiently and expeditiously. They require a high degree of professionalism and are heavily relied upon by judges as a way of ensuring that court proceedings are conducted in an accountable and efficient manner. [49]

It is also widely acknowledged that SRLs generally do not understand or have the skills or objectivity to negotiate an out-of-court settlement.[50] Given the high numbers of SRLs, this poses a significant administrative burden on a court system that relies heavily on parties settling matters out-of-court.

Longer proceedings also inevitably impose extra costs on the opposing party.

6 POSSIBLE CAUSES

There are a number of factors that can explain the significant and growing number of SRLs. The inhibitive cost of funding litigation is the most obvious one. Interconnected is the issue of public funding of legal representation. The overwhelming consensus amongst researchers, judicial officers, academics and other interested parties including the Commonwealth Attorney-General is that self-representation is inversely related to public funding in that inadequate funding effectively erodes legal representation.[51]

However, some SRLs choose to represent themselves because they sincerely believe that they could do a better job; or they receive advice from advocacy and support groups and proceed with this support. Others, though, act despite advised of no valid case, or continue for some other emotional or personal reason. It is recognised that many SRLs in Queensland pursue unmeritorious claims and often

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[48] Chief Justice Paul de Jersey, 'Legal Educators' State Conference Keynote Address', Parliament House, Friday 13 August 2003, p 1, downloaded 25 March 2008 from website at http://archive.sclqld.org.au/; The Law Council of Australia (in conjunction with Australasian Institute of Judicial Administration, National Legal Aid and Aboriginal and Torres Strait Islander Legal Services) *Erosion of Legal Representation in the Australian Justice System*, Report, February 2004, pp 7-8, downloaded 26 March 2008 from website at http://www.lawcouncil.asn.au/

[49] Chief Justice Paul de Jersey, pp 7-9

[50] Australian Attorney-General's Department, *Federal Civil Justice System*, Strategy Paper, December 2003, p 98, downloaded 26 February 2008 from website at www.ag.gov.au

[51] See for example, Australian Attorney-General's Department, p 106; The Law Council of Australia.

use the court system to air grievances and advance their cause in an irrational and obsessive manner.[52]

Another possible reason for increased numbers of SRLs is to do with the demystification of the law. Recent efforts to simplify court procedures and the dissemination of plain English information on websites, in booklets/leaflets, information kits and manuals have all helped to demystify the law and make it more accessible.[53] In addition, the Australian public has become notably more sophisticated, assertive, and confident which, together with the internet, have all helped to foster a 'can-do' self-help culture. In this respect, the Australian Law Reform Commission has acknowledged that self-representation can be regarded as a success: a sign of successful implementation of certain court initiatives aimed at reducing a litigant's reliance on legal representation.[54]

7 COURT INITIATIVES

Most courts have recognised SRLs as a legitimate group of litigants and implemented strategies to accommodate for their needs. Some of these are:

- utilisation of various information strategies such as the provision of plain English information and explanations in the form of brochures, leaflets, information kits, instruction manuals etc. In relation to Queensland, see the plain English fact sheets: http://www.courts.qld.gov.au/1346.htm;
- use of technology including websites as a medium of communication. In relation to Queensland, see: http://www.courts.qld.gov.au/101.htm;
- simplification and refinement of court procedures including the rethinking and modification of the adversarial procedures;
- greater use of registry and other non-judicial staff to aid SRLs;
- training judicial and non-judicial staff on SRL specific issues;
- implementation of pro-bona lawyer/barrister schemes;

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52 J Dewar, B Jerrard & F Bowd, 'Self-representing Litigants: A Queensland Perspective', *The Queensland Lawyer*, 23, December 2002, pp 65-77, p 67.

53 The Law Council of Australia, pp 14, 52

54 The Australian Law Reform Commission, *Managing Justice: A review of the federal civil justice system*, Final Report No 89, 2000, p 376, downloaded 4 February 2008 from website at www.austlii.edu.au/au/alrc/publications

- collaboration with legal aid and other community groups on the provision of information and resources to the public;
- collaboration with private and public providers of legal services;
- better control of meritless SRLs; and
- breaking down cases into sequential parts to allow for the 'unbundling' of legal services thus giving SRLs the opportunity to obtain paid legal advice for some but not necessarily all steps of litigation.

Despite these initiatives, there have been repeated calls for courts to take further action, in particular, in relation to the collection of data, the provision of information and the simplification of court procedures (see below). There are still a significant number of courts and tribunals that keep no (or only minimal) data on SRLs, and that have not adequately accommodated the needs of SRLs.[55]

Recently, though, the Family Court has undertaken some bold measures of reform (in this court, over the reporting periods of 2003/04 and 2006/07 some 34%-54% of litigants were self-represented).[56] The Family Court has undertaken significant reform of its procedures in a move away from an over-reliance on the adversarial rules and procedures to a less adversarial trial (or LAT). In doing so, the Family Court has recognised that the mere simplification and modification of the existing adversarial court procedures do not go far enough in providing for the needs of various litigants, and that more drastic reform based on an inquisitorial model is required.[57]

In adopting change, the Family Court was influenced by criticism from, amongst others, Justice Geoffrey Davis (formerly of the Queensland Court of Appeal) and Justice Robert Nicholson (formerly of the Federal Court). Both Justices have challenged the traditional model of the adversarial system:

> *...not just because of the costs and delays with which they have been frequently associated, but also out of concern at their inability to produce fair results and outcomes based on objective truth...[and that]...the unfairness of the system is most*

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[55] Australasian Institute of Judicial Administration & the Federal Court of Australia, *Forum on Self-Represented Litigants*, A Report, 2005, p 5, downloaded 4 March from website at http://www.aija.org.au/

[56] Family Court of Australia Annual Report 2006/07, p 54

[57] The inquisitorial model is used by most countries in Europe and Latin America, and is different from the adversarial system of litigation in that judges play a more active and interventionist role in proceedings before a court. Under this model, a judge is often thought of as an enquirer rather than the impassive arbiter of the adversarial model.

> *apparent where the parties have unequal bargaining power (most obviously where one is unrepresented)…"*[58]

These views are held by many who recognise that the adversarial system is not conducive to justice where large numbers of SRLs are concerned.[59] For example, the Attorney-General's Report on the Federal Civil Justice System in 2003 notes that:

> *[t]he Australian legal system has traditionally adopted an adversarial approach to dispute resolution. However, it is now accepted that this is not always the most efficient or effective approach, due to its tendency to escalate and prolong some disputes.*[60]

It was also recently acknowledged in a conference attended by representatives of courts and tribunals around Australia that:

> *[i]t may be necessary for the bench to exercise greater control over the order and manner of the presentation of the evidence by SRLs than would normally be the case.*[61]

More recently, newly retired Federal Court judge Rodney Madgwick has called for a complete review and perhaps overhaul of the adversarial style of litigation:

> *So bad is the position in relation to small-scale litigation that serious thought should be given to a completely fresh look at it and we may have to consider means of bypassing the adversary system altogether…*[62]

These and other like comments indicate that more and more people are seriously calling into question the function and role of the adversarial system of litigation in the delivery of justice.

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[58] Family Court of Australia, *Finding A Better Way: A bold departure from the traditional common law approach to the conduct of legal proceedings*, April 2007, p 8, downloaded 26 March 2008 from website at www.familycourt.gov.au

[59] The Law Council of Australia (in conjunction with Australasian Institute of Judicial Administration, National Legal Aid and Aboriginal and Torres Strait Islander Legal Services) *Erosion of Legal Representation in the Australian Justice System*, Report, February 2004, para 3, downloaded 26 March 2008 from website at http://www.lawcouncil.asn.au/

[60] Australian Attorney-General's Department, *Federal Civil Justice System*, Strategy Paper, December 2003, p vi, downloaded 26 February 2008 from website at www.ag.gov.au

[61] Australasian Institute of Judicial Administration & the Federal Court of Australia, *Forum on Self-Represented Litigants*, A Report, 2005, p 10

[62] James Eyers, 'Relief for small litigators urged', *Australian Financial Review*, 23 April 2008, p 5.

8 RECOMMENDATIONS

Below is a summary of recommendations on SRLs that have been published in the more recent reports.

Strategy Paper on the Federal Civil Justice System (December 2003) [63]

The strategy paper was prepared by the Commonwealth Attorney-General's Department to provide broad guidelines on the development of policy in relation to the federal civil justice system. The paper builds on earlier research, in particular, the Australian Law Reform Commission's 2000 Report: *Managing Justice: A review of the federal civil justice system.*[64]

Numerous recommendations were made that focused on the short and long term improvements in relation to the management of civil disputes, litigant interaction with the court system and the role of the courts and lawyers. Specifically in relation to SRLs, it was acknowledged that assistance should be focused around the three themes of:[65]

- enhancing SRLs' understanding of the legal system; simplifying and making the litigation process more accessible;
- enhancing access to information and resources on dispute resolution and litigation; and
- enhancing access to legal advice and representation (eg, through community legal services and legal aid).

Report: Erosion of Legal Representation in the Australian Justice System (2004)[66]

This report was compiled by the Law Council of Australia in conjunction with the Australasian Institute of Judicial Administration, National Legal Aid and Aboriginal and Torres Strait Islander Legal Services.

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[63] Australian Attorney-General's Department, *Federal Civil Justice System*, Strategy Paper, December 2003, downloaded 26 February 2008 from website at www.ag.gov.au

[64] The Australian Law Reform Commission, *Managing Justice: A review of the federal civil justice system*, Final Report No 89, 2000, access from website at www.austlii.edu.au/au/alrc/publications;

[65] Australian Attorney-General's Department, *Federal Civil Justice System*, Strategy Paper, December 2003, p 100, downloaded 26 February 2008 from website at www.ag.gov.au

[66] The Law Council of Australia (in conjunction with Australasian Institute of Judicial Administration, National Legal Aid and Aboriginal and Torres Strait Islander Legal Services) *Erosion of Legal Representation in the Australian Justice System*, Report, February 2004, downloaded 26 March 2008 from website at http://www.lawcouncil.asn.au/

In 1994 the Law Council of Australia asserted that if public funding did not keep up with the increasing costs of legal representation, access to justice would be impeded. The purpose of this report was to document research undertaken over the period of 1994 – 2002 to examine whether or not legal representation had declined in Australia, and if so, the consequences of such decline.

In recognition that there had been a significant erosion of legal representation over the 1994-2002 period, the report made nine recommendations:

- urgent attention should be given to providing increased funding for bodies that provide publicly funded legal representation;
- establish a national task force comprising representatives of publicly funded bodies to develop national guidelines and priorities;
- the Commonwealth Government should reform the federal/state divide of legal aid funding in order to facilitate a more client-centred approach;
- ensure that the provision of regional legal services is coordinated between the relevant bodies of legal aid commissions, Aboriginal and Torres Strait Islander Legal Services, community legal centres and the private profession;
- implement innovative scholarship and subsidy schemes to encourage young people from rural and remote regions to become lawyers and also, to encourage lawyers to practice in regional and remote areas;
- develop a strategy to regularly and independently review the legal aid scales. To help retain the involvement of more experienced lawyers and to ensure equity of representation, the scales should be adjusted to reflect the actual costs of providing legal services;
- streamline the administration of the grants of legal aid; and
- Federal and State Courts are encouraged to continue to assist SRLs and to collect, analyse and publish data on this class of litigants.

Report: An Evaluation of Services for Self-Represented Litigants in the Federal Magistrates Court (October 2004)[67]

The Federal Magistrates Court conducted a self-evaluation with the objectives of measuring the court's performance on SRLs; identifying areas that do and do not work well and to promote the court's commitment to accommodating the needs of all types of litigants.

The Report culminated in the making of 12 recommendations:

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67 Federal Magistrates Court of Australia, *An Evaluation of Services for Self-Represented Litigants in The Federal Magistrates Court*, October 2004, downloaded 26 March 2008 from website at http://www.fmc.gov.au/

- determine the demand for court information products in foreign languages;
- determine the viability of collecting data on SRLs at various court events and in general federal law cases;
- review the induction and ongoing training of telephone staff;
- review the court's website and develop a 'self-represented link';
- review and publish more information, and increase the accessibility to information on primary dispute resolution;
- review all court forms to determine the appropriateness of producing self-help kits;
- develop technology to enable court forms to be downloaded and saved;
- review and enhance signage around the court;
- display publications at all registries;
- investigate training and/or implement a management guide for judicial and non-judicial staff;
- review existing publications and publish new user-friendly information; and
- review the effectiveness of the recommendations and identify areas that require improvement.

Report: Forum of Self-Represented Litigations (2005)[68]

This Report documented the findings of a forum on SRLs and was compiled by the Australasian Institute of Judicial Administration and the Federal Court of Australia. The forum was attended by representatives from the courts and tribunals around Australia, and representatives from other groups including the Council of Australasian Tribunals, the Commonwealth and State Attorney-Generals, the Law Council of Australia, the National Civil Justice Review, the National Association of Community Legal Centres, National Legal Aid, and the National Pro Bono Resources Centre.

In addressing the particular needs of SRLs, the Report noted 23 'themes and future directions' which can be summarised under the three broad headings of court processes, court administration and other administration:

Court processes:

- court processes need to be flexible and adaptive to the particular jurisdiction, the nature of the case and the parties involved;

[68] Australasian Institute of Judicial Administration & the Federal Court of Australia, *Forum on Self-Represented Litigants*, A Report, 2005, downloaded 4 March from website at http://www.aija.org.au/

- the impact of fee increases and the factors taken into consideration when fees are waived need to be documented and analysed;
- examine the impact of early case intervention and the application of ADR/conference procedures;
- further examine the procedural requirements of expert evidence;
- further examine the procedural requirements of cross-examination;
- consider greater reliance on written submissions in place of oral submissions before a court;
- consider using the guardianship jurisdiction to obtain limited orders in relation to vexatious litigants;
- consider giving summary decision on points of claim and defence rather than on pleadings;
- further examine the role of jury trials; and
- further explore criteria for identifying unmeritorious claims.

Court administration:

- in view of bringing a longer term strategic approach to the management of SRLs, courts and tribunals should continue to consider adopting SRL management plans;
- courts need to collect comprehensive data on SRLs to enable this group to be properly profiled and understood;
- further articulation and distinction needs to be made between the provision of 'advice' and mere 'guidance' to SRLs by court staff;
- consider the particular security risks that SRLs raise;
- consider the extent that courts can be the drivers of assistance schemes for SRLs (eg, establishing self-help centres).
- assess the role of websites in the provision of information to the public;
- consider the further development of ongoing judicial and non-judicial staff education and training programs; and
- in relation to registry work, incorporate SRLs as a criteria for the qualifications/accreditations of senior staff qualifications.

Other administration:

- the AIJA could establish a shared website with information concerning initiatives taken by courts and tribunals;
- the AIJA should continue to liaise with the Standing Committee of Attorneys General on an ongoing basis;
- SRLs should be consulted on their perceptions and experiences in relation to the litigation process;

- give due consideration and recognition to the substantial experience of tribunals and lower courts in managing SRLs; and
- the AIJA, courts and tribunals should remain in communication with institutions that are involved with SRLs (eg, the Chief Justices Council, the Chief Magistrates Council and the Standing Committee of Attorneys General).

APPENDIX A – SUMMARY REPORTS

Below is a brief outline of the more significant reports and publications that have been used to compile this Brief.

Research conducted by the Australian and Western Australia Law Reform Commissions

In 1995, the Commonwealth Attorney General commissioned the Australian Law Reform Commission (ALRC) to conduct a review of the federal civil justice system (both courts and tribunals). As part of its terms of reference, the ALRC was to consider a number of specific issues including SRLs. The review resulted in a major four year inquiry – the largest and most comprehensive conducted in Australia to date. As part of this review, the ALRC published a number of background and discussion papers including *The Unrepresented Party.*[69] The ALRC published its final report in 2000 entitled *Managing Justice: A review of the federal civil justice system.*[70] Both papers identified SRLs as a major issue and proposed a number of measures of reform to accommodate for this growing class of litigants.

In 1999, the Law Reform Commission of Western Australia undertook a similar review making like observations in relation to the WA justice system.[71]

The Australasian Institute of Judicial Administration (AIJA)

The AIJA is a research and educational body that is funded by a Standing Committee of Attorneys-General that has approximately 1,000 members comprising judicial and tribunal officers and others with an interest in judicial administration.

In 1998, the AIJA published a report that was written by Stephen Parker entitled *Courts and the Public* (better known as the Parker Report). The Parker Report

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69 The Australian Law Reform Commission, *The Unrepresented Party*, Background Paper 4, December 1996, downloaded 4 February 2008 from website at www.austlii.edu.au/au/alrc/publications;

70 The Australian Law Reform Commission, *Managing Justice: A review of the federal civil justice system*, Final Report No 89, 2000, downloaded 4 February 2008 from website at www.austlii.edu.au/au/alrc/publications

71 Law Reform Commission of Western Australia, *Review of the Criminal and Civil Justice System in Western Australia*, Final Report, 1999, downloaded 11 February 2008 from website at http://www.lrc.justice.wa.gov.au

"*…proved to be a best seller and to lead to constructive changes in the number of administrative practices of courts*."[72] It was noted in the Report that little was known about SRLs due to the rudimentary data collection by the courts. The Report recommended that:

> *All courts should have a litigants in person Plan that deals with every stage in the process, from filing through to enforcement, or the equivalent in criminal matters. This is recommended so that systematic attention is given to the issues. As part of the litigants in person Plan guidelines should be prepared by judicial offers so that best practice is identified and shared between them as to how to conduct a hearing where one or more of the parties are unrepresented*.[73]

In 2001 the AIJA (under the supervision of the AIJA Courts and Public Committee incorporating 6 judges across most jurisdictions, a Special Counsel, CEO of the Family Court and Professor Stephen Parker) published another but related report entitled *Litigants in Person Management Plans: Issues for Courts and Tribunals*.[74] The Report was referred to court administrators around Australia as a guide for courts and tribunals in planning for the management of SRLs.

In conjunction with the Law Council of Australia, National Legal Aid and Aboriginal and Torres Strait Islander Legal Services, the AIJA conducted further research on the topic and in February 2004 published a report entitled *Erosion of Legal Representation in the Australian Justice System*.[75] The Report covered the period from 1994-2002 and concluded that a lack of legal aid (amongst other less significant factors) has caused a rise in the number of SRLs; which in turn is having a major negative impact on the Australian justice system.

In September 2004, the AIJA, in conjunction with the Federal Court of Australia, reported on the Forum on Self-Represented Litigants that it hosted and which was attended by representatives from the courts and tribunals around Australia, and representatives from other groups including the Council of Australasian Tribunals,

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[72] Hon Justice Robert Nicholson, 'Australian experience with self-represented litigants', *Australian Law Journal*, 77, 2003, pp 820- 826, p824.

[73] Australasian Institute of Judicial Administration, *Litigants in Person Management Plans: Issues for Courts and Tribunals*, publication 060, 2001, p 1, downloaded 4 March from website at http://www.aija.org.au/

[74] Australasian Institute of Judicial Administration, *Litigants in Person Management Plans: Issues for Courts and Tribunals*

[75] The Law Council of Australia (in conjunction with Australasian Institute of Judicial Administration, National Legal Aid and Aboriginal and Torres Strait Islander Legal Services) *Erosion of Legal Representation in the Australian Justice System*, Report, February 2004, downloaded 26 March 2008 from website at http://www.lawcouncil.asn.au/

the Commonwealth and State Attorney-Generals, the Law Council of Australia, the National Civil Justice Review, the National Association of Community Legal Centres, National Legal Aid, and the National Pro Bono Resources Centre.[76] The purpose of the forum was to bring together administrative bodies to identify initiatives and exchange ideas, policies and strategies concerning SRLs. The Report observed SRLs as an ongoing issue and that while only one court had adopted an SRL Management Plan, the courts have "…*increasingly undertaken initiatives designed to assist SRLs and to ease their impact on the court system*."[77]

In February 2005, the AIJA hosted another forum with a similar objective to facilitate the exchange of information and experiences between courts and other interested bodies specifically in relation to case management policies and strategies. The AIJA report on the forum entitled *Case Management Seminar* noted SRLs as an ongoing problem and suggested some methods of reform.[78]

The Attorney General's Department (Cth)

The Commonwealth Government issued a *Strategy Paper on the Federal Civil Justice System* in December 2003 in view of providing guidance on policy direction for the federal justice system.[79] The Paper identified SRLs as an ongoing issue confronting the courts and made some proposals for reform.

The Federal Courts

SRLs have been identified as a particular issue confronting the federal courts, especially the Family Court. The issue has been a catalyst for reform of the litigation process. See for example:

- Family Court of Australia, Finding A Better Way: A bold departure from the traditional common law approach to the conduct of legal proceedings, April 2007;[80]

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[76] Australasian Institute of Judicial Administration & the Federal Court of Australia, *Forum on Self-Represented Litigants*, Report, 2005, downloaded 4 March 2008 from website at http://www.aija.org.au/

[77] Australasian Institute of Judicial Administration & the Federal Court of Australia, *Forum on Self-Represented Litigants*, A Report, pp 3, 7

[78] Australasian Institute of Judicial Administration, *Case Management Seminar*, Report, 2005, downloaded 4 March 2008 from website at http://www.aija.org.au/

[79] Australian Attorney-General's Department, *Federal Civil Justice System*, Strategy Paper, December 2003, downloaded 26 February 2008 from website at www.ag.gov.au

[80] Downloaded 26 March 2008 from website at www.familycourt.gov.au

- Family Court of Australia, Client Service in the Family Court of Australia and the Federal Magistrates Court, Progress Report, October 2006;[81]
- Federal Magistrates Court of Australia, An Evaluation of Services for Self-Represented Litigants in The Federal Magistrates Court, October 2004.[82]

The Family Law Council has also published a Report that deals with SRLs in the Family Court. The Report is entitled *Litigants in Person*, 2000.[83]

Journal articles

A number of articles have identified SRLs as an issue of ongoing concern. See for example:

- Hon Justice Robert Nicholson, 'Australian experience with self-represented litigants', *Australian Law Journal*, 77, 2003, pp 820- 826;
- Dewar J, Jerrard B & Bowd F, 'Self-representing Litigants: A Queensland Perspective', *The Queensland Lawyer* , 23, December 2002, pp 65-77;
- Dewar J, Giddings J, Parker S (with Cooper D & Michael C), *Griffith Legal Aid Report : The Impact of Changes in Legal Aid on Criminal and Family Law Practice in Queensland,* Queensland Law Society and the Family Law Practitioners' Association, 1998; and[84]
- Sills, N, 'A Struggle for Justice: Legal Representation in Australia', *Law Society Bulletin*, April 2005, pp 17-19.

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[81] Downloaded 4 February 2008 from website at www.aph.gov.au

[82] Downloaded 26 March 2008 from website at http://www.fmc.gov.au

[83] A Report to the Attorney-General, downloaded 5 February 2008 from website at www.ag.gov.au

[84] Downloaded 25 March 2008 from website at http://www.griffith.edu.au/

APPENDIX B – NEWSPAPER ARTICLES

Title: **Decade of justice.**

Author: **Mark Oberhardt**

Source: **Courier Mail**

Date: **2 February 2008**

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CHIEF Justice Paul de Jersey cuts straight to the chase when he talks about the greatest challenges facing the state's court system. He believes the legal process, and in particular the civil courts, must be made available to all members of the community, and not just the rich and powerful.

De Jersey is also committed to keeping the court process open to public scrutiny and improving case completion rates.

His 10 years in what is considered one of the toughest jobs in the state have been marked by a constant push to modernise the legal system, but it has not always been with the full support of the legal profession.

Court wags joke that under de Jersey Queensland's courts skipped the 20th century and moved straight into the 21st.

It is a reference to the fact that for most of last century, legal processes were the same as in the 19th century.

However, in the past decade there has been enormous change.

The state's fourth longest-serving chief justice, de Jersey, 59, seems destined to fulfil his wish list in the 11 years before he retires.

He points out the way his judges have disposed of an enormous workload:

Last year the Court of Appeal handled 619 cases, the criminal Supreme Court 1354 matters and the civil, 4236 matters.

"You must understand that is a very large commitment when you allow for the fact there are only 25 Supreme Court judges statewide," he said.

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He believes the greatest challenge facing the courts is enhancing the accessibility of justice for all.

"Inaccessibility will always remain an albatross to the system, but all we can do is one way or another address it," he said.

While Legal Aid helps with criminal matters, there is no such support on the civil side.

"On the civil side, to litigate in the Supreme Court presupposes either financial support from others or considerable personal wealth," he said.

"We have endeavoured to meet the problem as best we can, refining our procedures, having alternative dispute resolution and also encouraging the profession into pro bono work."

The difficulty faced by parties with limited resources in pursuing viable claims could be helped by the new accessCourts system.

It will, in effect, help cash-strapped litigants determine whether they have a good case.

The scheme was launched last month by the Attorney-General Kerry Shine and is a major commitment by both the Government and courts.

A spin-off from the high cost of actions is the growing number of self-represented litigants.

"It is an increasing problem with a third of those in Court of Appeal cases self-represented and in the trial division, it's a little less," de Jersey said.

In cases involving self-represented litigants, judges have to walk a fine line to ensure everyone in the trial is treated fairly.

The limitation on the rights of injured parties to secure adequate compensation from the negligent parties is also a problem, de Jersey says.

But he isn't "holding his breath" for a change in current policy. Despite its problems, he believes the court system has remained remarkably resilient.

"Candidly, another obvious disappointment has concerned the anguish of people involved in court processes who, on appeal, have been vindicated," he said.

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"That said, public confidence in the working of this court has survived some highly publicised challenges during the past few years."

The past decade has also seen the courts and officers making a far greater effort to explain to the public and media the legal processes and, in particular, controversial decisions.

The Chief Justice has been on both ABC and commercial radio in recent years, putting forward the courts' side of stories, something that was unheard of in previous administrations.

Another aspect of open courts also has the Chief Justice concerned: he believes suppression orders should be used as infrequently as possible.

"Legislation prohibits publication in some situations but judges have generally resisted other applications except where necessary," he said.

"It is of great concern that we (must) remain resistant to suppression. That is because suppressing public notice of our process imperils the stipulation for openness for which our process utterly depends."

On the plus side, there have been many achievements during the past 10 years.

"Whether I have achieved anything is for other people to judge," he said.

"But what I have observed over the past 10 years is a much more timely disposition of the courts case load.

"Ten years ago, the civil side of courts was beset with delay both in the hearing of cases and the delivery of judgments.

"I was very pleased when, shortly after I became Chief Justice, the judges agreed to a protocol requiring the delivery of judgments within three months. It has generally been adhered to."

De Jersey points to a long list of other achievements.

Public access to the courts has increased with major events now held in the Banco Court and others.

Every year Queensland rates as the best in terms of being a cost-effective jurisdiction.

An electronic case-management system has been installed which has done away with the need for costly and time consuming callovers of cases.

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A new disciplinary regime for practitioners, the Legal Practitioners Tribunal, has replaced the old Law Society model.

There has also been a State Government commitment to a new District and Supreme Court building and a multimillion-dollar revamp of security.

De Jersey admits there is still a lot of work to do but he is confident Queensland can continue to deliver a top-class legal system.

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Title: **Internet DIY slows the courts**

Author: **Renee Viellaris**

Source: **Courier Mail**

Date: **21 February 2006**

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WANNABE lawyers determined to have their day in court are clogging up Queensland's judicial system and frustrating judges.

More people pursuing what they believe are their legal rights and learning law on the Internet are being blamed for the problem.

The number of civil claims lodged in magistrates' courts have increased by 6.9 per cent since 2002-03.

There were 27,806 claims in 2003-04 and 30,908 in 2004-05.

However, the statistics did not reveal how many people represented themselves.

In Queensland, magistrates' courts deal with small claims (including residential tenancy disputes) up to $7500, minor debt claims up to $7500 and other claims up to $50,000.

Chief Magistrate Marshall Irwin's recent annual report said: "Unless there are exceptional circumstances allowing for legal representation, the litigants in such proceedings are self-represented, which is a further challenging aspect of the work of the court."

Chief Justice Paul de Jersey said the problem could be fixed by extending Legal Aid to the civil arena but it would be considered too costly for the State Government.

"There's no doubt we have experienced a marked increase in the number of people presenting their cases themselves," Justice de Jersey said.

"With the Internet especially, people are becoming more interested in pursing what they perceive to be their legal rights."

He said more people were also probably learning how to be a lawyer on the web.

"It's also difficult for the judges in the sense that where you've got one party represented and where one isn't, the judge is obliged to ensure that the matter is conducted fairly.

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"There is a residual concern, also, that good points lurking in the background may not be flagged as they would be were lawyers involved."

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Title: **High Court adjusts for go-it-alone litigants.**

Author: **David Solomon**

Source: **Courier Mail**

Date: **12 March 2005**

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THE greatest contemporary challenge for Australian courts is a huge increase in unrepresented litigants, according to Queensland Chief Justice Paul de Jersey.

Unrepresented litigants are having a significant impact in all courts, but particularly in appellate courts such as the Courts of Appeal in the states and the High Court where around one-third of all cases involve self-represented applicants.

Their impact has forced many courts to change their procedures. Partly in response to their disruptive effect, the High Court this year has introduced a new system of dealing with applications for special leave to appeal.

The problem doesn't just affect judges and court staff. In many cases it may damage the prospects of the person who either cannot afford to be represented by a lawyer, or refuses to have any association with a lawyer.

A study by the Australian Institute of Judicial Administration in 2001 found that in the Family Court litigants in person:

* Were more likely that the population as a whole to have limited formal education, limited income and assets and have no paid employment.

* That a significant group of them were dysfunctional serial litigants.

It found that many litigants in person chose to be self-represented.

Their reasons included suspicion and resentment towards the legal profession, the opportunity to use the court as a soap box to air grievances, the belief that they did not need a lawyer to present their case and the perception that there may be an advantage in being self represented.

Chief Justice de Jersey said all these positions "are completely misguided". He added that self-litigants "are often blinded by an intractable commitment to the rightness of their cause, and display an obsessional attention to peripheral detail. They lack an objective view of legal and factual reality".

He said that while the right to represent oneself in court proceedings is fundamental to accessible justice, in many instances exercising that right will inevitably reduce the chance of obtaining justice.

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"Without legal training you will struggle to identify the issue and lack the capacity to present it."

Chief Justice de Jersey said the percentage of unrepresented litigants in the Court of Appeal over the past three years had been about 30 to 35 per cent.

In the Supreme Court about one in six litigants was self-represented while in the District Court the figure was one in 14.

High Court Chief Justice Murray Gleeson said in his court the pressure on judges caused by unrepresented litigants is not so great, because oral arguments on special leave applications were limited to 20 minutes.

Many litigants in person will no longer get to make a personal appearance in the High Court.

From this year, the written submissions in all special leave applications will be reviewed by the Chief Justice.

If he considers an application can be rejected on the papers, he then refers it to two other Justices who have the power to dispose of the application without an oral hearing.

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Title: **High Court to be more selective**

Author: **Chris Merritt**

Source: **Australian Financial Review**

Date: **21 February 2004**

Page **6**

The High Court will look for more efficient ways of dealing with the number of people who want to argue their case before the nation's highest court.

The volume of litigation has grown to such an extent that Chief Justice Murray Gleeson conceded on Friday that the court was under pressure and had to become more selective about the cases it heard.

While appeals and constitutional cases will be unaffected, changes will focus on the rising number of applications for special leave to appeal to the court, which have grown from 185 to 530 in 18 years.

Justice Gleeson told a constitutional law conference in Sydney, hosted by the Gilbert + Tobin Centre of Public Law, that pressure at the top of the court system was an inevitable consequence of the expansion in litigation.

While the rate of increase was steady, there was no doubt it would continue.

"To the extent to which it reflects increases in the numbers of judicial decision makers in other courts, it is entirely natural," he said.

"Whether it also reflects an increase in litigiousness of the population, or sections of the population, is more difficult to tell."

To ease the pressure, he said new procedures would be introduced this year and hinted some applicants for special leave to appeal may lose their right to a limited period of oral argument before a High Court judge.

Instead, some applications for permission to take a case to the High Court may be decided entirely on written submissions, along the lines of procedures in the US Supreme Court.

"Some leave applications may be better dealt with on the papers, especially if the outcome one way or the other is obvious," he said.

"In other cases, a hearing in court, under tightly controlled time limits, following a review of the papers, as at present, is more transparent, more efficient, and more likely to yield a just result."

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The change was welcomed by the president of the Law Council of Australia, Bob Gotterson QC, who said one factor contributing to the pressure on the court had been the exponential growth in the number of unrepresented litigants seeking special leave to appeal.

"Given that self-represented litigants enjoy a success rate of 0.7 per cent, there is every reason to think ...there will be a high number of hopeless ones," he said.

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