Self-represented parties and court rules in the Queensland courts

Iain McCowie*  

The Queensland Public Interest Law Clearing House Incorporated (QPILCH) has operated a Self Representation Service at the Queensland courts since late 2007. The service's file work provides anecdotal evidence about the difficulties that self-represented litigants can have in complying with the requirements of court rules. The grievances of self-represented litigants reflect some of the concerns about the costs and delays in the conduct of litigation generally. The successful use of case management regimes to administer an increasing civil case load suggests that appropriately adapted case management might also assist the courts to respond to the challenges of, and faced by, self-represented litigants. In an innovative development (and with some input from QPILCH) the Supreme Court of Queensland, in Practice Direction 10 of 2014, has adopted a Supervised Case List for cases involving a self-represented party in the Brisbane Registry of the Supreme Court.

Anecdotal evidence suggests that self-represented parties are placing an increasing burden on the courts.1 Since late 2007, the Self Representation Service operated by the Queensland Public Interest Law Clearing House Incorporated (QPILCH) has been coordinating assistance to self-represented parties in the civil jurisdictions of the Queensland Supreme and District Courts. The service coordinates volunteers from 15 partner law firms to provide discrete task assistance to self-represented parties in arranged appointments of one hour.

The service assists people at all stages of the court process, from considering commencing proceedings, attending to various interlocutory steps, preparing for trial, to advising about post-judgment steps such as appealing or enforcement. The service also attempts to dissuade self-represented parties whose cases lack merit from continuing (or bringing) their cases.

While the service is now no longer unique in Australia,2 QPILCH has six years of data and experience (from over 1,000 applications) about self-represented litigants in the Queensland courts. This data and these experiences provide useful insights into the difficulties that self-represented parties face when navigating the civil litigation system.

A self-represented party can be a source of frustration and delay for judges and opposing lawyers. Yet many self-represented parties who approach the service also express frustration at the time that court proceedings take and the difficulties of navigating the complex rules and procedures. These frustrations were also identified by the Civil Justice Council in its 2011 report on self-representation in the courts of England and Wales.3

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2 South Australia’s JusticeNetSA is trialling a pilot project and the Commonwealth government is funding a roll out of a Self Representation Service in the Federal Court registries following the QPILCH model.

The difficulties self-represented parties can cause or encounter in litigation raises the prospect that
the court rules (designed by lawyers for lawyers) may inadvertently make litigation more difficult for
self-represented parties. The rules may also provide the solution to improving self-represented parties’
access to the system and reducing their burden on the system.

Three questions are considered in this article:
1. What are the steps in the civil litigation process that cause difficulties for self-represented parties?
   (a) When, in their proceedings, are self-represented parties most likely to seek QPILCH’s assistance?
   (b) What tasks is QPILCH helping self-represented parties with?
   (c) What do self-represented parties say about the litigation process?
2. What are the main causes of these difficulties?
3. What steps are being taken by Queensland courts to ease these difficulties?

WHAT ARE THE STEPS IN THE CIVIL LITIGATION PROCESS THAT CAUSE
DIFFICULTIES FOR SELF-REPRESENTED PARTIES?

When, in their proceedings, are self-represented parties most likely to seek
QPILCH's assistance?

The table below summarises a recent sample of data from the service about the stage of the
proceedings at which clients approached the service.

<table>
<thead>
<tr>
<th>Stage of proceedings</th>
<th>% of applicants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apply prior to commencing proceedings</td>
<td>27.4%</td>
</tr>
<tr>
<td>Apply while proceedings are on foot</td>
<td></td>
</tr>
<tr>
<td>Preparing an initial defence/response to proceedings</td>
<td>13.5%</td>
</tr>
<tr>
<td>Responding to a strike out/summary judgment application</td>
<td>10.6%</td>
</tr>
<tr>
<td>An interlocutory step not requiring a court hearing*</td>
<td>12.1%</td>
</tr>
<tr>
<td>An interlocutory hearing†</td>
<td>11.1%</td>
</tr>
<tr>
<td>In response to a Case Flow Management / Supervised Case List Hearing</td>
<td>1.9%</td>
</tr>
<tr>
<td>Preparing for trial</td>
<td>4.3%</td>
</tr>
<tr>
<td>Apply after judgment</td>
<td></td>
</tr>
<tr>
<td>Enforcement</td>
<td>7.2%</td>
</tr>
<tr>
<td>Post judgment advice about appealing</td>
<td>12%</td>
</tr>
</tbody>
</table>

* For example, disclosure, amending a document, taking a step in a proceeding after a delay, sending a formal letter
foreshadowing an interlocutory application about the other party’s non-compliance.
† Bringing or responding to an application about non-compliance with the rules (but not involving a direct determination of the
proceedings), a request to dispense with a signature on a request for trial date, security for costs.

In summary, approximately 27% of applicants come to the service before commencing
proceedings, approximately 20% after judgment, and the remainder (approximately 53%) apply at
some interlocutory step.

Focusing on those self-represented parties who apply for assistance at an interlocutory step,
QPILCH’s data suggests that self-represented parties require assistance to:
1. prepare a defence or some other initial response to proceedings against them;
2. take steps to progress a matter, usually once the pleadings have closed, or to have a matter set down for trial;
3. prepare for (either to bring or respond to) an interlocutory hearing; and
4. respond to steps to bring the matter to an end without a final decision on the merits.

A recent evaluation of the service found that self-represented parties’ legal problems tended to have persisted over a number of years before they approached the service.\(^4\) For over three-quarters of the self-represented parties interviewed for the evaluation their initial response was either to seek legal advice, or to contact the other person directly.\(^5\) Self-represented parties expressed openness to compromising to reach an agreement.\(^6\)

**With what tasks are self-represented parties seeking assistance?**

The following table summarises some recent data from the service on what tasks are being performed in appointments:

<table>
<thead>
<tr>
<th>Task</th>
<th>% of appointments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary advice about commencing court proceedings</td>
<td>13.3%</td>
</tr>
<tr>
<td>Advice about alternative options to resolve the dispute</td>
<td>11.7%</td>
</tr>
<tr>
<td>Responding to a summary judgment application</td>
<td>10.3%</td>
</tr>
<tr>
<td>Drafting an application and affidavit</td>
<td>8.8%</td>
</tr>
<tr>
<td>Post judgment steps or enforcement</td>
<td>8.8%</td>
</tr>
<tr>
<td>Advice ahead of specific hearing</td>
<td>5.9%</td>
</tr>
<tr>
<td>Trial preparation</td>
<td>5.9%</td>
</tr>
<tr>
<td>Drafting a notice of appeal</td>
<td>4.4%</td>
</tr>
<tr>
<td>Basic advice about appeal procedures</td>
<td>4.4%</td>
</tr>
<tr>
<td>Amending a defective pleading</td>
<td>4.4%</td>
</tr>
<tr>
<td>Disclosure</td>
<td>4.4%</td>
</tr>
<tr>
<td>Letters to the other party about non-compliance</td>
<td>2.9%</td>
</tr>
<tr>
<td>Drafting a statement of claim</td>
<td>2.9%</td>
</tr>
<tr>
<td>Drafting a defence</td>
<td>2.9%</td>
</tr>
<tr>
<td>Drafting an outline of argument</td>
<td>2.9%</td>
</tr>
<tr>
<td>Assistance preparing for mediation</td>
<td>2.9%</td>
</tr>
<tr>
<td>Drafting an application for stay and appeal docs</td>
<td>1.6%</td>
</tr>
<tr>
<td>Drafting a client statement or affidavit</td>
<td>1.6%</td>
</tr>
</tbody>
</table>


\(^5\) Giddings et al, n 4, p 22.

\(^6\) Giddings et al, n 4, p 22.
This table suggests that once a self-represented party has decided to commence proceedings, preparing pleadings, dealing with defective pleadings, and preparing for hearings tend to be the tasks with which they require assistance.

What grievances/issues do self-represented parties identify within the litigation process?

In addition to the empirical data, some of the issues that self-represented parties raise with QPILCH are:

1. Concern over delays in litigation. These arise in a number of ways. A plaintiff may not be aware of the next steps in the proceeding. A represented defendant might adopt a “wait and see” strategy when responding to a self-represented plaintiff. A party may have trouble paying their lawyer’s fees.

   Example 1:
   Deena has brought defamation proceedings against her former business partner Josephine. Deena has spent $60,000 on solicitor’s fees and is now self-represented. Deena wants to bring the case to an end. At a mediation, Josephine offers to settle the case on the basis that Deena pays her costs of $5,000, Deena says that she cannot afford this. The parties cannot reach an agreement, but neither wants to take it to trial.

2. Self-represented parties have expectations of the court system that do not reflect the reality of the court system.7 For example:
   (a) the technical requirements of the rules of pleading;
   (b) the obligation to inform the other party of the case against them before the trial;
   (c) parties expect that they will get an opportunity to tell the judge hearing their case their story; and
   (d) parties expect the court and the rules of procedure to give them a clear map of what is going to happen in the proceedings. The Uniform Civil Procedure Rules 1999 (Qld) (UCPR) are quite clear on the pleading process, but after that it can be more difficult. Sometimes cases will be stuck in the pleadings phase and disclosure and setting down for trial do not happen.

   One self-represented litigant assisted by the service commented:
   I found it a little unnerving that at the initial hearing the Judge knew nothing about the application being made or the … Act. A person self representing does not know that the judge is not aware in advance of the cases he (or she) is about to hear.

3. Sometimes self-represented parties offer a concern that the Rules are stacked against them or that there are double-standards in the court’s treatment of them as opposed to represented parties.8 This often stems from a failure to understand how particular legal concepts operate.

   Example 2:
   Diedre is the defendant in a contempt of court action brought against her by her former employer, GHI Pty Ltd. The court had previously granted GHI an injunction against Diedre from doing certain acts. The court makes very detailed directions about the filing and service of documents (Diedre may have been avoiding service). The directions require GHI to file and serve their affidavit material for the contempt hearing by 4 pm on Thursday 13 May. Diedre receives the documents by email on Thursday 13 May at 6:40 pm. Diedre wants to bring an application to the court about this non-compliance. The judge hearing the case commented that Diedre misunderstood the difference between her obligations under the injunction, and GHI’s obligations under the directions orders.

   Example 3:
   Norman is the plaintiff in a personal injuries claim in the Supreme Court against his former employers XYZ Pty Ltd. A year before trial he disputes his lawyer’s advice to settle his claim and

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7 See Civil Justice Council Report, n 3 at [99] for 10 suggested changes to the civil justice system suggested by one self-represented litigant.

8 This can be contrasted with the position that many lawyers or their clients feel that a self-represented party is treated more favourably.
becomes self-represented. The matter proceeds to trial. Norman wants to rely on reports by Dr Black and Dr Green. Dr Green’s report arranged and paid for by XYZ’s insurer strongly supports Norman’s liability claim.

Norman and XYZ’s lawyers correspond before trial. XYZ’s lawyers write to Norman that “it is appropriate that the lay and medical witnesses are notified before trial”. Norman doesn’t know that he should subpoena Dr Green and XYZ do not call him at trial. Norman attempts to tender Dr Green’s report to the Court, XYZ object and the trial judge supports this objection. The trial judge finds that Norman has not been able to establish liability, and Norman loses his case.

4. Trials and hearings are particularly stressful for self-represented litigants.

The court’s perspective

As part of the evaluation mentioned earlier, judges of the District and Supreme Court were surveyed. Most judges reported that self-represented parties in particular needed legal assistance to respond to an allegation that their proceedings were defective. They noted that referrals to the service for assistance were occurring later in the proceedings than would be ideal.9 The judges thought that self-represented parties did not understand the court’s expectations of them, that this lack of knowledge hampered a self-represented litigant’s ability to put forward a reasonable case or defence, but that self-represented litigants were in the main keen to obtain this help.10

Registry staff, who are more likely to interact with a self-represented litigant at an earlier stage of proceedings, had greater scope to refer a self-represented litigant to the service before proceedings were commenced.

Analysis

From the author’s experience of working with self-represented litigants over the years, the following seem to be the problem areas for self-represented parties:

1. Meeting the requirement to plead the material facts establishing the elements of a cause of action can be difficult for the inexperienced. Some self-represented litigants treat their pleadings as an affidavit, others simply attach the documents or evidence that they want to rely on. The High Court noted in Aon Risk Services Australia Ltd v Australian National University (2009) 239 CLR 175 that the rules of “fact pleading” give “almost total freedom to the parties to fix ‘the facts’ to which the law is to be applied, leaving it to the court only to resolve, on the evidence produced by the parties, those which are in controversy between them”.

2. Identifying what facts are relevant as opposed to what is immaterial. Often there is an expectation that the judge should have the entire background of a case. This can lead to pleadings in narrative format setting out the evidence that the party intends to rely on or irrelevant background material.

3. Related to the above point, what is or is not a document directly relevant to a fact in issue in legal proceedings is another area. This can mean that a self-represented party may not have disclosed all of the relevant material that is required to establish their case or defence. There is also confusion about documents relating to credit, and documents that may be of only indirect relevance to the issues in proceedings.

Example 4:

Walter is the plaintiff in proceedings against his brother Nathan to recover one half of the insurance payout for a jointly owned property that burnt down. Nathan counterclaims for repayment of a loan made in 1995. Walter denies that a loan was ever made. Walter wants to tender in evidence a copy of his will from 2000 in which he appoints Nathan as his executor and leaves all of his estate to his two children. Walter tells the Service that the will supports his case because if he had borrowed money from Nathan, it would have been referred to in the will.

9 Giddings et al, n 4, pp 11 and 13.
10 Giddings et al, n 4, p 15.
The Service has to explain to Walter that the lack of a provision in his will for repayment of the debt does not prove his case that there was no loan. We explain that it would be equally consistent with Nathan’s case that Walter had reneged on a loan agreement.

4. Complying with tight timeframes, eg the requirement to plead to an amended pleading within eight days. While it is important for litigation to progress expeditiously, requiring a self-represented litigant to adhere to the same timeframes as a party represented by an experienced litigation lawyer can add unnecessarily to the stresses and costs of all parties in litigation.

5. Responding to tactical approaches by a represented party facing a poorly drafted or even unmeritorious pleading. Some represented parties will file an application to strike out or for summary judgment in such a case. Others will put the self-represented party on notice but not take any formal steps, and then wait until the trial for the self-represented party to attempt to put forward their defective case.

Example 5: Sonia is the plaintiff in a professional negligence action against Joe Bloggs Solicitor. Joe admits to not filing proceedings on Sonia’s behalf in the relevant court and missing the limitation date, but argues that because the amount Sonia would have recovered in compensation was less than the legal costs to Sonia of doing so, Joe’s actions were not negligent. Joe’s professional indemnity insurer instructs solicitors. They do not file a strike out application, or application for summary judgment. They do write to Sonia several times to point out some deficiencies in her case as pleaded. The trial Judge finds that Joe Bloggs was not negligent, because the costs to Sonia of bringing her action would have exceeded any amount she may have recovered.

Example 6: John and Nicole are the defendants in a District Court action for nuisance in a neighbour dispute. John and Nicole have filed a defence (while represented by a small suburban firm) that included a number of non-admissions complaining that the plaintiffs had not properly particularised their case. John and Nicole serve a lengthy request for particulars that is answered by the plaintiffs. John and Nicole never amend their defence to respond to the allegations against them. Rather than file a summary judgment application, the plaintiffs hide their time. John and Nicole can no longer afford representation and become self-represented. The plaintiffs then send John and Nicole a request for trial date that John and Nicole sign and return, unaware of the significance of this fact.

Example 7: Christine is the defendant in a motor vehicle property damage case brought by Nigel. She wants to argue that her motor vehicle, because of its height, could not have caused the damage to Nigel’s car. The Magistrate hearing the case tells Christine that she must put her case to Nigel’s

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12 Uniform Civil Procedure Rules 1999 (Qld), r 385(2).
13 Note that the use of the word “tactical” is not intended to be critical of the lawyers.
14 Under the Uniform Civil Procedure Rules 1999 (Qld), r 470, a party requires the leave of the court to take a step in proceedings after a request for trial date is filed.
witnesses. Christine does not put her questions to Nigel’s loss assessor on the stand who gives expert evidence on the cause of the accident. Later Nigel successfully objects to Christine introducing her evidence because it is opinion evidence. Christine is found at fault for the accident.

**WHAT ARE THE MAIN CAUSES OF THESE DIFFICULTIES?**

It is one thing to identify the difficulties that a self-represented party may face. But assessing what can be done about these difficulties requires a consideration of the reasons for the rules.

The rules of pleading are complicated to the uninitiated. But, in all likelihood, a party who cannot plead a case that complies with the requirements of the UCPR probably does not have a case. The rules assist the parties and the court to focus on the main issues in dispute between the parties. Likewise, as the decision of the High Court in *Aon* recognises, the efficient operation of courts is a legitimate and desirable goal.

Perhaps part of the cause of the difficulties is the complexity of legal reasoning. While it is desirable that all litigants before the courts be treated the same, regardless of whether or not they are represented, it is not realistic to hold a self-represented party to the same standards as a represented party. There has to be a balance.

The current approach of the courts seems to be to recognise that a self-represented party may require some further assistance in representing themselves in court. The nature of assistance to be provided by the court to a self-represented litigant “depends on the litigant, the nature of the case, and the litigant’s intelligence and understanding of the case”.

**WHAT STEPS ARE BEING TAKEN BY QUEENSLAND COURTS, PARTICULARLY CASE MANAGEMENT AND OTHER COURT SUPERVISION PROCEDURES, TO EASE THESE DIFFICULTIES?**

The “more leisured age” of litigation largely left the progress of cases to the parties. This traditional approach can be contrasted with the current expectations of the courts of the conduct of litigation, highlighted in *Aon* and in various court rules, eg the undertakings in r 5 of the UCPR.

Increasingly, the courts have turned to case management to deal with cases. The Queensland Supreme Court had three distinct case management systems. The Commercial List for the complex commercial litigation expected to take up to 10 days, the Case Flow Management List for dealing with cases that have been subject to delay, and the Supervised Case List for cases where a trial of at least five days is expected or the matter will require a more intensive use of court resources.

While the Commercial List is not relevant to this topic, a number of self-represented parties find their cases subject to the Case Flow Management List or the Supervised Case List.

**Case Flow Management List**

The Case Flow Management List becomes activated when more than six months after a defence is filed a request for trial date has not been filed. This reflects the court’s expectation that generally parties who are proceeding expeditiously will be ready for trial within six months.

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17 *GSA Industries Pty Ltd v NT Gas Ltd* (1990) 24 NSWLR 710 at 716

18 Supreme Court of Queensland Practice Direction No 3 of 2002 (as amended), *Commercial List* at [7(a)(ii)].


20 Case Flow Management Practice Direction at [5.1].

21 Case Flow Management Practice Direction at [2.4].
matters with delays tend to find themselves on this list. The Case Flow Management List generally encourages parties to come to an agreement on future directions by directing their minds to a number of areas.22

The most significant feature of this system is that if: the parties do not respond to an intervention notice, directions orders are not complied with by the due date, or the parties cannot reach agreement about the proposed directions by the due date, then the case can become deemed resolved.23 If a matter has been deemed resolved, then the matter is stayed.24 The Registry will issue a final order and the plaintiff needs the leave of the court to “reactivate” a matter.25 This can put a self-represented plaintiff at a real disadvantage.

Example 8:

Neville is the plaintiff in a negligence case against his former accountants. Neville’s case is on the Case Flow Management List. The most recent directions require the parties to complete disclosure and to file a request for trial date by 20 June or the matter will be resolved. Neville and the defendants are unable to reach an agreement about disclosure and the matter is then deemed resolved. Neville then has to bring an application to reactivate his proceedings.

Another potential disadvantage of the Case Flow Management List is that a particularly timid self-represented party may want to avoid a court hearing, and so may agree to proposed directions that are presented to them by the other party without having a full appreciation of what it is that the party is agreeing to.

Supervised Case List

The Supervised Case List is directed towards those cases that are more likely to require more resources from the court.26 However, closer court supervision of cases can also help to address some of the concerns of self-represented parties and assist the court. In a case involving a self-represented plaintiff who had sought leave to take a step in his proceedings after a delay, Atkinson J noted that:

strict directions are required which must be complied with if the matter is to proceed. … The matter needs the intensive and strict supervision that it will have if it is put on the supervised case list and I will refer it to the supervised case list.27

Review hearings under the Supervised Case List allow the court to use its broad powers under the UCPR28 to avoid unnecessary technicality and help the parties to focus on the real issues in dispute.

Example 9:

John and Lynda and their company ABC Pty Ltd (John and Lynda are the sole shareholders and officeholders of the company) are the defendants in proceedings by DEF Pty Ltd. John was a former Director of DEF. DEF allege that John, who was responsible for arranging the salary packaging for DEF’s employees, with Lynda’s assistance, made contracts with ABC to lease cars for DEF’s employees. This resulted in payments to ABC and then to John and Lynda. DEF seek to recover those payments. This case is on the Supervised Case List. John and Lynda have spent $200,000 on legal fees and run out of funds to pay their lawyers.

After a Review, Lynda files an amended defence. DEF’s lawyers respond to this by applying to have the amended defence struck out on the basis that Lynda has not explained her denials as required by the UCPR. Lynda files an affidavit that outlines her response to the allegations against her.

22 Case Flow Management Practice Direction at [6.2].
23 Case Flow Management Practice Direction at [5.4] and [7.1].
24 Case Flow Management Practice Direction at [3.3].
25 Case Flow Management Practice Direction at [3.3].
26 Supreme Court of Queensland Practice Direction 11 of 2012, Supervised Case List at [7(b)].
27 Drabsch v The Public Trustee of Queensland [2012] QSC 217 at [35].
28 See below for an outline of the relevant rules.
The judge hearing the application makes orders allowing Lynda’s amended defence to stand, on the basis that her explanations of her denials and non-admissions are those contained in her affidavit, and a further affidavit to be filed by Lynda addressing a couple of specific issues.

This type of judicial intervention highlights the benefits of court supervision for all parties, not just self-represented parties.

**The SRL Supervised Case List**

In an important innovation, in February 2014, the Supreme Court of Queensland adopted Practice Direction 10 of 2014 – *Supervised Case List Involving Self Represented Parties: Civil Jurisdiction Brisbane.* This Practice Direction creates a new list, the SRL Supervised Case List, for civil cases in the Brisbane Registry involving a self-represented party. QPILCH was consulted by the Supreme Court in the formulation of this Practice Direction.

There are a number of significant features of the Practice Direction.

1. It sets up a framework for dealing with self-represented parties.
2. The Practice Direction intends to ensure that consistently with the UCPR and the need for the court to remain impartial, self-represented parties have a fair opportunity to present their case.
3. The framework is flexible, which allows the court the opportunity to tailor its approach to the specific case before it. There is a large variety in the capabilities of self-represented litigants.
4. This flexibility equips the court to address the risks that subjecting a case to supervision front-loads a case leading to increased costs, particularly at an early stage. Ideally, these costs (if in fact they occur) would be outweighed by the benefits to the parties of having the case dealt with more efficiently by the time it gets to trial. The discretionary element allows the court to consider how often review hearings are necessary.
5. The Practice Direction draws on, but simplifies the Supervised Case List Practice Direction (No 12 of 2012), in particular:
   a. The Supervised Case List Practice Direction requires the lawyer with carriage of the matter, usually counsel or a senior litigation lawyer to attend review hearings. The SRL Supervised Case List Practice Direction requires only that the lawyer for a legally represented party attending a review hearing must be familiar with the case and able to make submissions about directions.
   b. The SRL Supervised Case List Practice Direction omits detailed provisions about document plans or expert evidence, but retains the flexibility for them to be used if required in contrast to the Supervised Case List Practice Direction.
   c. The SRL Supervised Case List Questionnaire is simplified and a plain English document. The Practice Direction also requires at each hearing after the first, for the parties to update the court on what has happened since the last hearing.
   d. The Supervised Case List Practice Direction and the various attachments to it come to an intimidating 35 pages. The SRL Supervised Case List Practice Direction and Questionnaire come in at nine pages, with an additional one page list of community legal centres to consult for assistance.
   e. The SRL Supervised Case List Practice Direction is largely a self-contained document. It does not incorporate other documents.
6. While the framework is flexible, it tends to favour the early involvement of the court in proceedings.
7. The SRL Supervised Case List Practice Direction also aims to identify quickly cases where a party who had legal representation, ceases to do so. Thus Part 2 requires all parties, including

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30 SRL Supervised Case List Practice Direction at [14].
31 SRL Supervised Case List Practice Direction at [5.5]
32 See SRL Supervised Case List Practice Direction at [6] and [19] and Supervised Case List Practice Direction at [33].
those with legal representation, to notify the court if one of them is, or becomes, self-represented. If savings and efficiencies are to be achieved by court management, then it was thought better to commence this as early as possible.

8. The SRL Supervised Case List Practice Direction encourages the court to make orders that are easily understandable and that describe the steps to be taken and the due dates. So, for example, “the parties are to serve their lists of document by 12 May 2014” rather than “the parties are to complete disclosure by …”.

9. In paragraph 5.3 of the SRL Supervised Case List Practice Direction, the court recognises the importance of certain fundamental principles that should guide the court in making directions. These include:
   (a) that the court must ensure that a self-represented party has a fair opportunity to present their case;
   (b) that the Practice Direction is not intended to limit the court’s discretionary powers;
   (c) that a self-represented party may require longer than a represented party to complete a task;
   (d) that review hearings may not need to take place with the same frequency or formality as Supervised Case List hearings; and
   (e) that the parties should be encouraged to consider mediation or other forms of dispute resolution.

10. The SRL Supervised Case List Practice Direction includes a requirement that the self-represented litigant be informed of independent community legal centres that may be able to assist the party. This will encourage self-represented parties to seek legal advice and assistance at an earlier stage of their proceeding.

Potential pitfalls of the SRL Supervised Case List Practice Direction

It is worth considering some of the potential pitfalls of the SRL Supervised Case List.  

1. Increased supervision means increased use of scarce court resources.  
2. More hearings mean greater costs for self-represented parties.  
3. More supervision will lead to more directions that self-represented parties will be unable to comply with, potentially clogging the system with more hearings (and greater costs).  
4. Supervision will lead to more cases being dismissed earlier.  
5. The Practice Direction favours self-represented litigants with “kid glove” treatment that will drive up a represented party’s costs.  
6. The Practice Direction paints all self-represented litigants as problem cases.  
7. The Practice Direction ultimately does nothing. The court already has the powers that the Practice Direction grants.

Early involvement by the court

Let us particularly consider the question of whether or not early involvement by the Supreme Court in cases under the SRL Supervised Case List will increase costs. In England and Wales, both the Civil Justice Council Report and the Chancery Modernisation Review identified the desirability of early involvement by the court in proceedings. Advantages of early involvement are as follows:

1. Self-represented parties’ lack of legal knowledge and know-how is more likely to mean:
   (a) that the relevant issues in proceedings have not been identified; and
   (b) that they may not be aware of the necessary rules that they need to follow.

2. Those cases that are suitable for summary disposal can more easily be identified.

33 SRL Supervised Case List Practice Direction at [7.5].

34 Civil Justice Council Report, n 3 at [100]-[102].


36 Lord Justice Briggs, n 35 at [9.69] and [9.70]. Note that Briggs LJ makes the point at [9.70] that the court may more confidently make orders against a self-represented litigant for non-compliance where clearly spelt out orders have been made.

37 Lord Justice Briggs, n 35 at [9.71].
3. Self-represented parties have tended to follow directions that are made in a court hearing rather than in writing or telephone hearings.  
4. Self-represented parties can benefit from encouragement to consider alternative dispute resolution from the court.  
5. Once a Request for Trial Date has been filed, a party needs the leave of the court to take a step.  
Aon suggests that courts may be less than willing to grant a party the indulgence of significant late amendments to their pleadings. As Briggs LJ notes, unfairness to a self-represented party cannot simply be addressed at trial by “the patience, courtesy, and investigative court-craft of the experienced judge”.  
6. It reduces the potential risk of lawyers acting strategically to prevent a self-represented party with a legitimate case from having the opportunity to present that case.  

The SRL Supervised Case List Practice Direction embodies a balance. By devoting more resources to cases at an earlier point, self-represented parties can be directed towards legal assistance and cases focused on the real legal issues. This will assist those self-represented parties with merit. Weak cases can also be identified, and hopefully guided towards a quick resolution rather than languishing in the court files for years. Both of these outcomes will, it is hoped, make those cases that proceed to trial run more efficiently.  

The SRL Supervised Case List Practice Direction gives some discretion to the court in dealing with self-represented parties, but ultimately the position must always be that a self-represented party must still comply with the requirements of the UCPR. In this way, the Practice Direction may perhaps allow flexibility in some cases, but a self-represented litigant will still have to comply with the same rules and have an opportunity to participate in the case against them.  

The ultimate aim of the Practice Direction is to ensure fairness.  

**The value of the SRL Supervised Case List Practice Direction**  
As to the final criticism referred to above, that the court already has the powers that the Practice Direction grants, it is true that the Supreme Court already possess a broad discretion in dealing with cases. Rule 5 of the UCPR sets out the court’s general guiding philosophy. Rule 366 gives the court the power to make directions. Rule 658 empowers the court to make orders that are appropriate to deal with a case. The court’s inherent power is also relevant. However, the Practice Direction sets up a transparent framework for what has previously been a discretionary area. This is a positive development.  

Second, the Practice Direction will play a role in how the represented and self-represented parties deal with cases in the court. It will encourage self-represented parties to get early assistance for their cases. Third, the Practice Direction is the court’s recognition that the right of a self-represented party to a fair opportunity to present their case sits alongside other ideas such as efficient case management. Unfortunately, there is sometimes a tendency to think of all self-represented litigants as vexatious or querulous.  

**How might the Practice Direction operate?**  
At the time of writing, the SRL Supervised Case List Practice Direction had only been in force for one month. Nonetheless it is helpful to consider how the Practice Direction may have assisted some of the clients referred to in the examples above.

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38 Lord Justice Briggs, n 35 at [9.72].  
39 Lord Justice Briggs above n 35 at [9.73].  
40 Uniform Civil Procedure Rules 1999 (Qld), r 470.  
41 Lord Justice Briggs, n 35 at [9.73].  
Example 1 – This example is problematic. The rules are based around the idea of a plaintiff expediting proceedings or, if this is not the case, then the defendant taking steps to strike out. If neither party is willing to take those steps, then there is not much that can happen. Ideally, the SRL Supervised Case List would prevent these cases from reaching these stages.

Example 2 – Diedre’s case would have been subject to supervision from fairly early on, when it became apparent that this would have been a case requiring some greater use of resources.

Example 3 – Ideally there would have been greater discussions between Norman and XYZ’s lawyers about the evidence at trial. Hearings before the trial could have potentially given the court an opportunity to raise these issues before the hearing.

Example 6 – Perhaps at a supervised case hearing the judge may have raised with John and Nicole some of the issues about the adequacy of their defence, and the significance of a request for trial date could have been raised.

CONCLUSION

The Queensland Law Society’s 2013 Access to Justice Scorecard revealed that solicitors in Queensland thought that the UCPR represent a fair balancing of the rights of defendants and plaintiffs set within the overarching philosophy embodied in r 5 of the UCPR. Nonetheless, the court rules have largely been designed by and for litigation lawyers. Self-represented litigants, whether their numbers are increasing or not, do not easily fit within that system. The SRL Supervised Case List Practice Direction is an important initiative of the Supreme Court of Queensland.

Perhaps more is needed. Briggs LJ suggests in his Chancery Modernisation Review that peripheral steps might not be enough to address the issues that self-represented litigants can face in complex civil litigation, and that it is presumptuous and wrong to assume that written descriptions of practice and procedure truly intelligible to the average self-represented litigant can be drafted by lawyers. This is a pessimistic view.

Even if it is only a first step, the framework established by the Practice Direction will give guidance to the court and the profession in managing civil cases dealing with self-represented parties. The author looks forward to seeing it in action, and its adoption in other jurisdictions.

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45 Lord Justice Briggs, n 35 at [9.13].

46 Lord Justice Briggs, n 35 at [9.14].