

Cost-benefit Evaluation of the Self Representation Service at the Federal Courts, Brisbane

June 2015



What is not so well understood outside the court system and the legal profession is the cost to the system, and the community, in terms of disruption and delay, of the unrepresented litigant. If the work which the courts routinely leave to be done by lawyers is left in the hands of the litigants themselves, in most cases the work will either not be done at all, or it will be done slowly, wastefully, and ineffectively. (Chief Justice Gleeson)

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Executive Summary

The Queensland Public Interest Law Clearing House Incorporated (QPILCH) has commissioned BDO to undertake a cost-benefit evaluation of the Federal Courts' Self Representation Service that it provides in Queensland (the 'SRS').

The aim of self-representation services, as with legal assistance services generally, is to improve access to justice for people who are otherwise unable to afford legal advice, including by arranging *pro bono* representation in court. The SRS assists self-represented litigants with civil law matters, unlike the Legal Aid Offices which generally assist with criminal matters.

There have been previous evaluations of the SRS in Queensland, and of similar services in other jurisdictions, but most have been qualitative in nature, using anecdotal evidence about the benefits. One of the reasons for this has been the lack of available data that can be analysed to quantify the benefits of the service - which can then be compared with the cost of funding the service.

A self-representation service provides benefits to litigants, the courts, the economy, and society as a whole. Nevertheless, the most readily quantified benefit is the time-savings to the courts (and consequent costs avoided) that the service provides.

In its 2014 report *Access to Justice Arrangements*, the Productivity Commission identified the lack of policy-relevant data as a significant issue in evaluating the effectiveness of programs to improve access to justice in both Federal and State jurisdictions across Australia. It stated that:

Anecdotal evidence is rarely useful in determining whether programs are having the desired impact or if they are cost-effective. (Productivity Commission, p.881)

This present cost-benefit evaluation of the SRS seeks to partially address this issue by measuring the value of the resulting time-savings to the courts. This answers the threshold policy question, in a budget constrained environment, of whether the service improves the efficiency of the civil justice system.

It also comments on whether the PILCH model of self-representation service is likely to be more efficient than the alternatives. The report does not attempt to answer the broader policy question about the relative effectiveness of this or other programs in meeting the highest needs in terms of providing access to justice.

Specifically, this report:

1. assesses the costs and financial benefits of the SRS by drawing on data from QPILCH and from the Federal Courts Registry in Brisbane. It found that the SRS has a benefit-cost ratio of 2.1 – that is, the cost-savings are slightly more than twice the cost¹;
2. comments on the data gaps relevant to this cost-benefit evaluation²;
3. comments on whether the findings can be generalised to the PILCH and Legal Aid models of self-representation service adopted in other states and territories.

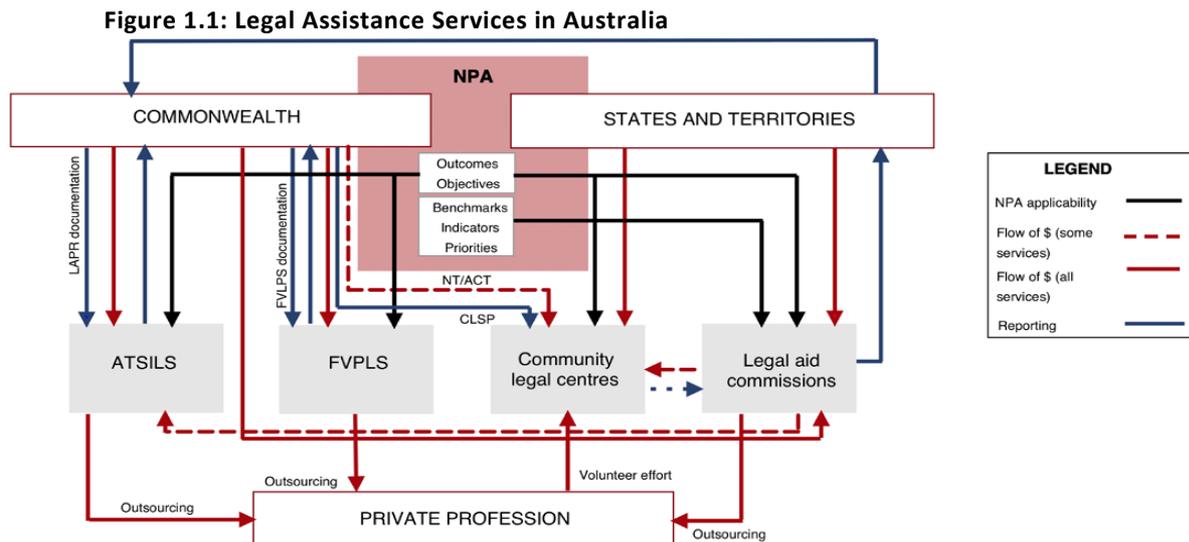
¹ This is the mid-point in a sensitivity analysis which assesses the impact on the ratio of changes in the key assumption – namely, the finalisation rate of matters filed in court.

² The Productivity Commission addressed the data gaps in relation to a full evaluation of the civil justice system (including the social benefits) by proposing an expansion of the evidence base. Specifically, it developed a table that relates the underlying policy questions to the available data and data gaps, and provided a suggested response to each gap. Extracts from this table which are relevant to self-representation services are at Appendix 3 to this report.

1. Background

The Attorney-General’s Department funds QPILCH for the SRS under its Civil Justice and Legal Services programme, as part of the national roll-out of self-representation services in registries of the Federal Court and Federal Circuit Court across Australia (*Attorney-General’s Department, 2014*).

Most legal assistance services are funded under the Commonwealth-State *National Partnership Agreement on Legal Assistance Services (NPA)*, as shown in Figure 1.1³.



Source: Allen Consulting

1.1 Objectives of a Self-Representation Service

The goal of a self-representation service is to provide a cost-effective service that improves access to justice for those self-represented litigants who cannot afford private legal assistance for civil matters (noting that legal aid is generally restricted to criminal matters).

Access to justice includes:

1. The ability of self-represented litigants to navigate the court/tribunal process;
2. The ability of self-represented litigants to put forward the best possible case and present it in such a way that it is determined on the merits/not injured by a lack of representation;
3. The ability of self-represented parties to determine if litigation is the best way for them to resolve their dispute;
4. Achieving an outcome that resolves the dispute according to the relative rights of the parties; and
5. The perception of self-represented litigants that the legal system is fair and just.

As indicated in the quote by Chief Justice Gleeson on the cover of this report, self-represented litigants impose significant costs on the court which do not apply when litigants have legal representation. To give an indication of the issues they raise, Appendix 2 lists nine guidelines for judges to observe in order to help ensure the courts provide a fair hearing for self-represented litigants.

³ While this Commonwealth-State Agreement recognises the role of the legal profession in providing *pro bono* services, it does not explicitly recognise the self-representation services provided through the PILCHs and Legal Aid WA.

The SRS aims to improve access to justice by assisting parties in the Federal Court and Federal Circuit Court with the following law types:

- Bankruptcy
- Judicial review / administrative law
- Competition and consumer matters
- Fair Work
 - Employment entitlements
- Enforcement
- Anti-discrimination
- Appeals from the Federal Circuit Court (other than Family law matters)
- Appeals from federal tribunals

1.2 QPILCH Services

In Queensland, QPILCH provides separate self-representation services at the Federal Courts, at the State Courts and at the Queensland Civil and Administrative Tribunal.

The service at the Federal Courts was established in February 2014, following a trial in 2012. QPILCH has since assisted with the national roll-out of self-representation services - with the 'PILCH' model being used by:

- Justice Connect in New South Wales, Victoria, Tasmania and the ACT; and
- JusticeNet SA in South Australia and the Northern Territory.

In Western Australia, the Federal Courts self-representation service is provided by Legal Aid WA.

The federal service operates in the Brisbane registry of the Federal Circuit Court and the Federal Court of Australia. It is provided by two full-time staff – a solicitor and a paralegal - between 9am and 5pm Monday to Friday. Their main tasks are to:

- handle enquiries
- assess applications for assistance
- coordinate the roster of volunteer solicitors from 12 QPILCH member firms
- brief volunteer solicitors on tasks for each client appointment
- conduct client appointments
- provide *ad hoc* assistance outside of appointments
- engage with relevant stakeholders
- undertake administrative tasks to operate the Service.

The rostered volunteer solicitors provide unbundled legal services in the following categories:

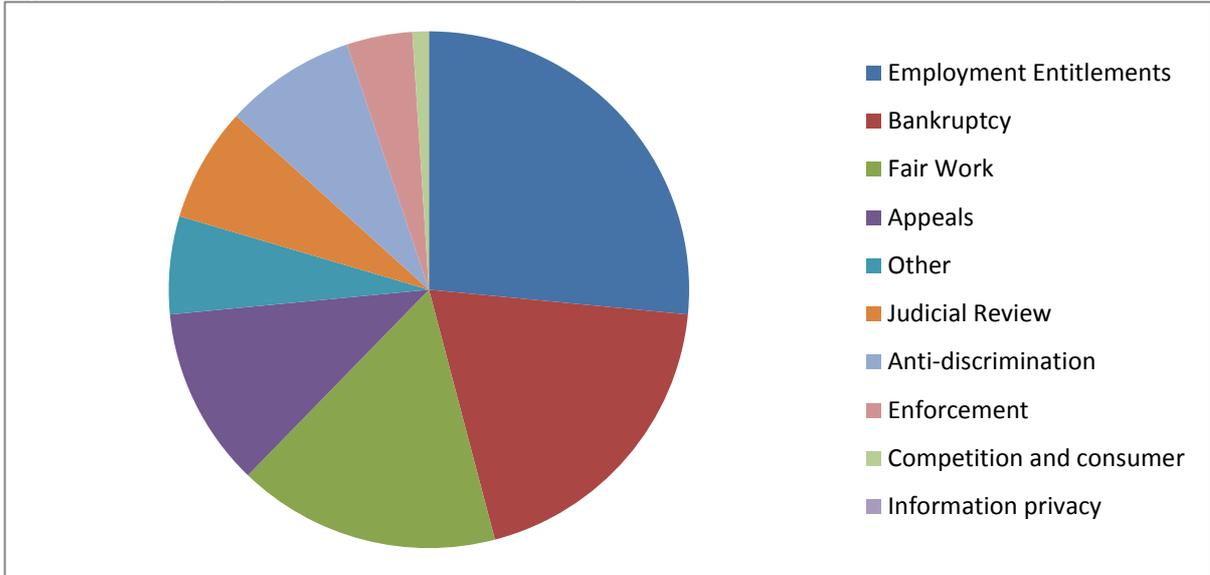
- Legal advice, including advice about commencing proceedings, prehearing and compulsory conference advice, advice about making interlocutory applications and complying with or enforcing decisions;
- Assistance to draft documents, including forms, submissions and affidavits;
- Referral to non-legal support services.

The roster for volunteer solicitors provides for nine one-hour meetings between 2pm and 5pm on Tuesdays, Wednesdays and Thursdays each week, while the Service solicitor conducts meetings outside those times as needed.

Clients are provided one initial appointment, after which those who are unable to afford private legal assistance, and for whom other forms of assistance are unavailable, may access further appointments as necessary.

In the SRS's operations at the Federal Courts, the proportions of matters it has dealt with within each law type are set out in Figure 1.2.

Figure 1.2: Law Types for Self-represented Litigants



1.3 Acknowledgements

The assistance of those who contributed to this evaluation is appreciated.

In particular, the advice of Elizabeth Pendlebury and Tony Woodyatt from QPILCH, of the Brisbane Federal Courts Registrar, Heather Baldwin, and of Janette McCahon from Legal Aid WA on court and legal assistance issues was invaluable. Of equal importance was the contribution of the paralegal, Hannah McAlister, in manually gathering the necessary data from court files.

2. Evaluation Approaches

While evaluations in the form of cost-benefit analyses quantify benefits which other evaluations often not do, they can have the disadvantage of excluding significant benefits that cannot be reliably or cost-effectively measured.

In the study *Economic Value of Community Legal Centres*, the Institute for Sustainable Futures noted that the tangible costs of solicitor and government-funded legal services are more readily measured than the less tangible, but no less important, benefits to:

- a litigant – such as being able to escape debt or domestic violence;
- society – such as improved workforce participation and productivity, or the protection of human rights.

This aspect, and the difference between social and financial benefits, should be kept in mind when comparing benefit-cost ratios between programs or against cut-off ratios⁴.

2.1 Previous Evaluations in Australia

Three evaluations of self-representation services in Australia have been identified and reviewed to assess the relevance of their objectives, methodologies and data sources to this cost-benefit evaluation.

2.1.1 Federal Magistrates Court, Melbourne

This was an internal evaluation to measure the Court's performance standards for self-represented litigants, and to address areas for improvement. It used three consultants posing as self-represented litigants, as well as a survey of 70 actual litigants.

In terms of performance, the evaluation found that 82 percent of litigants received a satisfactory level of service by the Court. In terms of improvements, it made 12 recommendations, including that the Court's case management system:

... capture self-representation at various court events and in general federal law cases [instead of only at the initial application stage, and only then in family law and child support cases].

2.1.2 Federal Court and Federal Magistrates Court, Brisbane

Dr. Kate Banks evaluated the effectiveness of the QPILCH trial from July 2011 to March 2012. This evaluation was largely qualitative, drawing information from a survey and from semi-structured interviews. Overall, from the stakeholder feedback received, it concluded that the pilot service was a success.

The evaluation made one quantitative finding that, in the nine-month period reviewed, the Court saved more than \$175,000 from the three diverted matters and the seven matters not commenced as a result of the SRS. This figure was based on a net cost per service of \$17,590 for the Federal Court in 2007-08, as reported in *A Strategic Framework for Access to Justice in the Federal Civil Justice System*.

2.1.3 QPILCH SRS (Queensland Courts), Brisbane

The objective of this research was to review the effectiveness of the QPILCH service. It surveyed a sample of users and collected data from the courts (judges, registry staff and associates).

⁴ A cut-off benefit-cost ratio of 1.3 has been proposed for public projects in Australia that are funded by taxation (Lawrence). However, governments often fund large infrastructure projects despite those projects having lower benefit-cost ratios, and delivering little if any cost-savings to the Budget.

The evaluation made a number of recommendations, including to improve the Court's knowledge of, and use of, the service. It also noted the challenges in collecting data from court registries on self-represented litigants.

2.2 Cost-Benefit Methodologies Elsewhere

2.2.1 United States of America

In a 2009 study for the Judicial Council of California (Greacan), data was gathered from six Californian county courts and their litigants. This data was used to quantify the economic savings for courts and litigants of 'self-help' services to self-represented litigants in family law and guardianship cases.

The data from the courts included:

- the times recorded for family law court hearings – from 19 minutes average before the service was introduced, to 5 minutes after – valued at \$69.26 per case;
- the reduced volume of 'guardianship packets' that the court investigator assisted self-represented litigants in completing - from 5.3 per month to 3.5 per month after (at 1.5 hours each packet);
- the reduced number of continuances per case attributed to the introduction of the service:
 - the time and cost saving (mileage and child care) for litigants in not attending continuances (an average of \$79.21 per hearing);
 - the 15-minute cost saving to the court (judge, clerk, bailiff, filing clerk and data entry clerk) - of \$74.21.
- the cost of each self-help contact – of \$34.00.

The resulting benefit-cost ratios were:

- for courts only – between 1.8 to 1 and 2.8 to 1
- for courts and litigants combined – between 3.0 to 1 and 3.8 to 1.

2.2.2 United Kingdom

The National Audit Office report *Implementing reforms to civil legal aid* found that a reduction in funding of legal aid had led to a 30% increase in family court cases in which both parties were self-represented.

The estimated cost of the reduced funding was £3million per year to the Courts Service, and £400,000 to the Ministry of Justice. The report noted the advice from judges that hearings with self-represented litigants take approximately 50% longer on average.

The Office's methodology for estimating these costs involved:

1. estimating from the court's databases the change in the number of people going to court without legal representation; and
2. multiplying this increase by the estimated 50% increase in the average cost of a family court case (of £547).

Where relevant, the above findings have been used as a reasonableness check on the findings of the present SRS evaluation.

3. Costs and Benefits of the SRS

3.1 Costs

QPILCH has been funded \$175,000 per year until 2016-17 to operate the service in the Brisbane Registry of the Federal Courts. This funding covers the employee costs of the Solicitor/Coordinator and a paralegal and the costs of a computer, printer and internet access.

This funding is equivalent to the cost of the service to the Commonwealth, except for the minor value of in-kind support from the Court Registry. The Registry provides the following in-kind support to the Service:

- a partly-furnished office
- an interview room
- telephones
- access to a photocopier.

As well, the Registry staff and Judiciary advise self-represented litigants about the service.

3.2 The Counterfactual

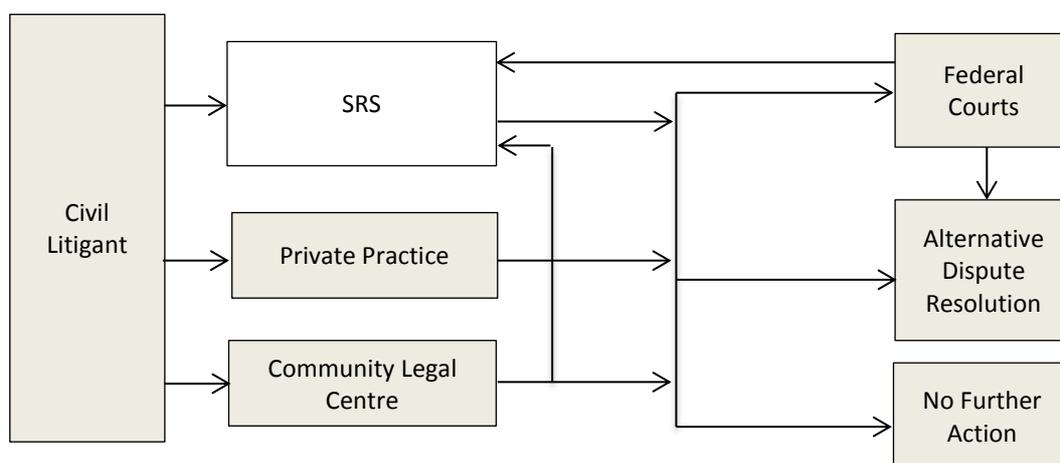
The benefits to be measured are the costs avoided relative to the most likely scenario if the SRS did not exist (the 'counterfactual'). This scenario involves an assumption about how the Commonwealth Government, the legal profession and the Courts would act in the absence of the service.

The Productivity Commission report states that the appropriate counterfactual for legal assistance services is the number and type of matters which, without the Service:

1. would not proceed;
2. would proceed through mediation and diversion;
3. would proceed through the courts without assistance;
4. would proceed through the courts with paid representation.

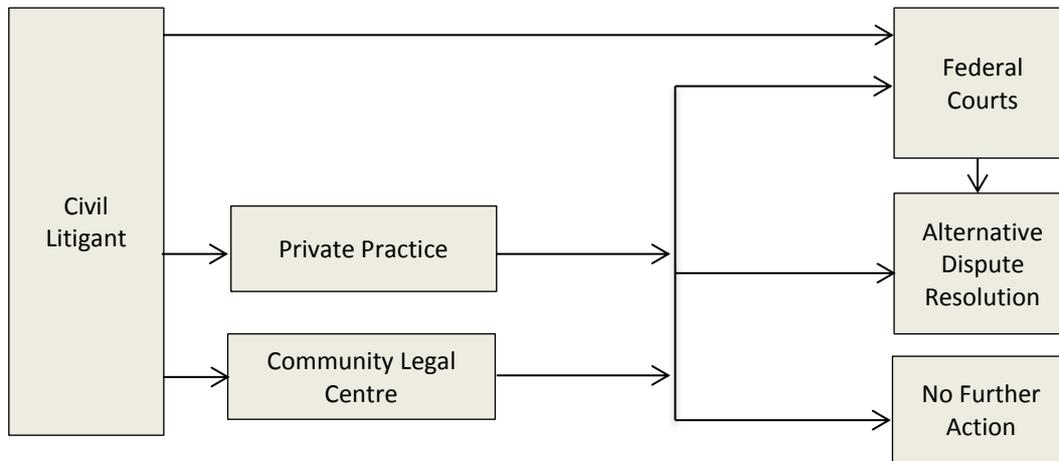
Figures 3.1 and 3.2 show the main litigant pathways 'with' and 'without' the SRS.

Figure 3.1: Litigant Pathways with SRS⁵



⁵ In Queensland, the cost of ADR is borne by the Courts when mediations were conducted by the Court Registrar. Prior to the SRS, they were sometimes also conducted by a Judge when a Registrar was not available.

Figure 3.2: Litigant Pathways without SRS (the ‘Counterfactual’)



The potential counterfactual scenarios are:

1. an increase in Government funding for Community Legal Centres or Legal Aid Offices; and
2. the re-introduction of *pro bono* referrals by the Federal Court Registry itself.

As community legal centres are generally staffed by lawyers who do not have the specialist legal knowledge to deal with the types of civil law matters that SRS lawyers deal with during working hours or volunteer lawyers who work after hours and under time constraints, the first scenario is not realistic. Similarly, the Legal Aid Office in Queensland mainly deals with criminal and family law matters and may need to hire lawyers with the required skills to assist with the range of federal civil law matters that the SRS deals with.

In relation to the second scenario, the re-introduction of *pro bono* referrals by the Court Registry, the Brisbane Federal Courts Registrar has advised that this approach was much less efficient than the current SRS model. This view is tested in section 3.3 of this report.

For this evaluation, the situation prior to the introduction of the SRS in late February 2014 is taken to be the counterfactual. Accordingly, the costs avoided have been estimated by comparing data on matters involving self-represented litigants which commenced in:

- the six-month period between August 2013 and February 2014 – *Before SRS*, with
- the six-month period between March 2014 and August 2014 – *With SRS*.

The Court Registrar has advised that there were no factors, other than the commencement of the SRS, which would have affected the number or composition of matters involving self-represented litigants being filed and heard between the two periods. Hence, the differences in data between the two periods can be validly attributed to the SRS.

3.3 Benefits

An SRS can have a range of benefits, but many of them are difficult to measure reliably. As well, the potential benefit of increasing the level of successful legal outcomes, even with legal representation of otherwise unrepresented litigants, has not been clearly demonstrated (Productivity Commission, p.1053).

The measurable benefits that can be attributed to a self-representation service include:

1. the time-savings to judges, associates and registry staff, including the associated cost overheads;
2. the time-savings and reduced travel costs to litigants from a reduction in appearances.

The first category can be measured most reliably, provided the data is available – the second category less so.

The time and cost savings to the Court are the direct result of the type and level of assistance provided by the SRS, compared with the time and costs that would be incurred without that assistance.

3.3.1 Impact of the SRS

Tables 3.1 and 3.2 summarises the sample data from Federal Court files relating to self-represented litigants in the *Before SRS* and *With SRS* periods.

Table 3.1: Impact of SRS on Federal Court, Brisbane (100% sample)

Forum and Law Type	Before SRS	With SRS
Matters with self-represented litigants	13	9
Court Appearances		
- Bankruptcies	3	1
- Appeals	29	14
Adjournments	7	2
Registry Appearances		
- Bankruptcies	9	6
- Appeals	91	83

Table 3.2: Impact of SRS on Federal Circuit Court, Brisbane (25% sample)

Forum and Law Type	Before SRS	With SRS
Matters with self-represented litigants	21	17
Court Appearances		
- Fair Work	3	3
- Bankruptcies	25	9
Court Finalisation Times (days)		
- Fair Work	280	79
- Bankruptcies	81	39
Registry Appearances		
- Bankruptcies	81	16
- Appeals	6	22
Adjournments	6	5

As indicated in the previous section, the differences in the number of matters, court and registry appearances and adjournments between the two periods can be attributed solely to the SRS.

Data on several law types that were not comparable due to small sample sizes in one or both periods has been excluded. As well, because data on Court sitting times was not recorded on most court files, it could not be used to measure the time-savings per appearance as a result of the SRS.

Nevertheless, the above Federal Court data is consistent with the scale of time-savings assumed by the National Audit Office in its UK evaluation, albeit in a different setting.

3.3.2 Unit Costs

Calculation of the cost-saving requires an estimate of the average cost of hearings before a Federal Court and before a Registrar. As the SRS has a long-term impact on these costs, it is appropriate to use the long-run marginal costs of each.

From available data in the annual reports of the Federal Courts, Commonwealth Budget Papers and other published sources, the long-run marginal costs are estimated to be:

- the Federal Court - \$23,034 per matter finalised;
- the Federal Circuit Court - \$2,248 per matter finalised;
- a Registrar’s hearing - \$178 per hour.

3.3.3 Assumptions

The key assumptions that are applied to this data are:

1. the finalisation rate (that is, the average extent to which matters filed with the court do not finalise) is 50% (subject to a sensitivity analysis – see Table 3.3);
2. the average percentage of case time for each appearance is 20% (that is, there are on average 5 appearances per case);
3. the average percentage of case time used in each adjournment is 5%;
4. the average cost of a Federal Court case involving a self-represented litigant is one-half that of cases involving all law types – namely, \$11,517 (that is, one-half of \$23,034).

3.4 Cost Savings and Benefit-Cost Ratio

Based on the above data and assumptions, the SRS avoids court operating costs of \$372,176 per year. This comprises cost-savings from:

• The number of matters diverted	\$82,036
• Fewer court appearances in matters not diverted	\$100,860
• Fewer court adjournments in matters not diverted	\$4,750
• Fewer registry appearances	<u>\$184,530</u>
Total	\$372,176

This equates to a benefit-cost ratio of 2.1.

As a reasonableness check, this ratio is at the lower end of the scale that which Greacan calculated in relation to Californian county courts (see section 2.2.1), after similarly excluding any time and cost-savings to litigants. As in that case, the measurement and inclusion of cost-savings to litigants would increase the ratio significantly, so that it becomes a broader, but still limited, measure of the social benefit of the SRS, rather than of the net financial benefit to government.

The sensitivity of the above ratio calculation to changes in the key variable – the percentage of matters that are finalised in court after being filed in the registry – has been tested. The results are shown in Table 3.3.

Table 3.3: Sensitivity Analysis

	Low	Mid-point	High
% of Matters Finalised in Court	30%	50%	70%
Costs Avoided	\$339,126	\$372,176	\$404,755
Benefit-Cost Ratio	1.9	2.1	2.3

Into the future, there is no reason to believe that the benefits will reduce over time. If anything, the avoided costs per matter are expected to increase as the SRS and its *pro bono* providers gain further experience with self-represented litigants.

The results should also be scalable - so that if the number of self-represented litigants increases over time, the benefits per dollar of funding are expected, over the medium-term, to similarly increase.

4. Data Gaps

4.1 Data Collected by Legal Assistance Services

In accordance with its grant agreement with the Commonwealth, QPILCH currently collects and reports statistics on:

- client demographics
- applicant or respondent
- law type
- telephone advices and face to face appointments
- sources of inward referrals
- assistance provided
 - general advice
 - drafting pleadings and affidavits
 - drafting correspondence and responses
 - interlocutory applications (e.g. injunctions)
 - directions or consent orders
 - evidence
 - alternative dispute resolution
 - preparing for trial or hearing
 - after final order (e.g. appealing)
- outward referrals
- outcome of intervention
 - discontinued
 - mediation
 - settlement out of court

To provide an evidence base that “informs legal assistance policy and service delivery”, the legal assistance sector and the Commonwealth Attorney-General’s Department have developed a draft *National Legal Assistance Data Standards Manual*.

The Manual is expected to apply to federal, state and territory government funded legal assistance services, including legal aid commissions and community legal centres. It provides a taxonomy of legal assistance services and specifies:

- a definition and counting rules for each type of service;
- the data to be collected:
 - for each category of service, and for referrals;
 - on users (individuals and the community), law and problem type, service characteristics and service results.

The type of data mentioned above should be useful in measuring and evaluating the impact of legal assistance services on the differing categories of people who are otherwise unable to access justice.

However, for an evaluation of the net financial benefits rather than the social benefits of a legal assistance program, the most relevant data is that relating to the courts themselves.

As the *Access to Justice Arrangement* report has noted:

Collecting data is not costless and some participants in this inquiry have raised concerns that data are sometimes collected with little apparent purpose. (Productivity Commission, p.1033)

4.2 Data required for Cost-benefit Analysis

The *Access to Justice Arrangement* report recommended that:

The provision of public finding ... to pro bono service providers should be contingent upon robust evaluation of the services provided. This evaluation should be conducted as part of the periodic review of broader legal assistance outcomes and resourcing. (Productivity Commission, Recommendation 23.4, p.68)

More specifically, it recommended that:

... priority should be given to examining the ... effectiveness of legal assistance providers, and cost-benefit analyses of the services they provide. (Productivity Commission, Recommendation 25.4, p.72)

The data required to undertake a cost-benefit analysis of a legal assistance service providing court or tribunal related services is that which is needed to quantify in financial terms:

1. the cost of operating the court; and
2. the costs avoided from reducing the demand for court hearings (whether before a judge or registrar).

Importantly, data on the demand for court hearings after a legal assistance service has commenced is of little use without a baseline of comparable data without that service or, if there is a viable alternative, of comparable data on an alternate service program or provider.

This baseline will normally be historical data - which may not always have been collected, or not be readily accessible from the courts' case management system. In this case, a cost-benefit analysis will need to (as the present one has) manually extract the data from court files relating to self-represented litigants whose actions were initiated before the service was introduced.

If a cost-benefit evaluation becomes a requirement for the future funding of legal assistance services, the cost of such evaluations needs to be commensurate with the level of funding – indicatively, no greater than 10% of that funding cost.

This would not be feasible unless data of the type summarised in Tables 3.1 and 3.2 of this report was readily available from the courts' case management system - rather than needing to be collected from individual court files (whether held in paper or electronic form).

Further, such evaluations would need to rely on fewer assumptions if up-to-date information was available on:

1. the cost per matter for differing law types before the Federal Court and Federal Circuit Court;
2. the cost of matters heard by a Registrar or in alternative dispute resolution forums; and
3. the completion rates for differing law types in those courts and forums.

The cost of collecting this data, and making it available for cost-benefit analyses on civil justice programs (and for the evidence-based policy decisions those analyses would inform), should be reasonable in comparison with the overall cost of those programs.

5. Generalising the Findings

The level of benefits provided by a self-representation service is expected to vary depending on the level of staff experience, the availability of experienced *pro bono* lawyers and the law types covered (noting for example that Justice Connect assists only with bankruptcy and fair work matters), while the costs of the self-representation services in each state are understood to be similar.

To the extent that the self-representation services provided by Justice Connect and JusticeNet SA are similar in these respects to the Queensland service (noting that they use the PILCH model developed in Queensland), a similar level of benefits would be expected to accrue in the jurisdictions they serve. At the same time, it would be useful to verify this if it could be done cost-effectively.

On the other hand, the Legal Aid model of self-representation service used in Western Australia differs somewhat from the PILCH model in that:

1. that state has a fused profession in which the availability of *pro bono* lawyers is more limited than in Queensland;
2. the self-representation service lawyer also represents clients in court where it is considered more efficient to do so; and
3. the service is provided at the Legal Aid Office, where litigants may also seek assistance with criminal matters, as well as at the court.

These differences in Western Australia mean that it would be more difficult to generalise the findings of this Queensland evaluation to the model used in that state.

Appendix 1: Source Documents

Allen Consulting Group *Review of the National Partnership Agreement on Legal Assistance Services* June 2013

Australian Public Service Commission *APS Remuneration Report 2013* www.apsc.gov.au

Attorney-General's Department Access to Justice Taskforce *A Strategic Framework for Access to Justice in the Federal Civil Justice System* September 2009 www.ag.gov.au

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Banks, C. *Evaluation of effectiveness of Queensland Public Interest Law Clearing House Self Representation Service in Federal Court and Federal Magistrates Court Brisbane* June 2012, www.qpilch.org.au

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Lawrence C. *Identifying an Australian 'Shadow' Benefit / Cost Ratio for Public Projects* 2009 www.mpra.ub.uni-muenchen.de

National Legal Assistance Data Standards Manual (unpublished draft)

Pendlebury E. *QPILCH's Self Representation Service in the Queensland Civil and Administrative Tribunal* www.aija.org.au

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Appendix 2: Guidelines for Judges dealing with Self-represented Litigants

In *Re F: Litigants in Person Guidelines 47*, the Full Court of the Family Court set out revised guidelines for judges when dealing with self-represented litigants.

Those guidelines are:

1. A judge should ensure as far as is possible that procedural fairness is afforded to all parties whether represented or appearing in person in order to ensure a fair trial;
2. A judge should inform the litigant in person of the manner in which the trial is to proceed, the order of calling witnesses and the right which he or she has to cross examine the witnesses;
3. A judge should explain to the litigant in person any procedures relevant to the litigation;
4. A judge should generally assist the litigant in person by taking basic information from witnesses called, such as name, address and occupation;
5. If a change in the normal procedure is requested by the other parties such as the calling of witnesses out of turn the judge may, if he/she considers that there is any serious possibility of such a change causing any injustice to a litigant in person, explain to the unrepresented party the effect and perhaps the undesirability of the interposition of witnesses and his or her right to object to that course;
6. A judge may provide general advice to a litigant in person that he or she has the right to object to inadmissible evidence, and to inquire whether he or she so objects. A judge is not obliged to provide advice on each occasion that particular questions or documents arise;
7. If a question is asked, or evidence is sought to be tendered in respect of which the litigant in person has a possible claim of privilege, to inform the litigant of his or her rights;
8. A judge should attempt to clarify the substance of the submissions of the litigant in person, especially in cases where, because of garrulous or misconceived advocacy, the substantive issues are either ignored, given little attention or obfuscated ...
9. Where the interests of justice and the circumstances of the case require it, a judge may:
 - draw attention to the law applied by the Court in determining issues before it;
 - question witnesses;
 - identify applications or submissions which ought to be put to the Court;
 - suggest procedural steps that may be taken by a party;
 - clarify the particulars of the orders sought by a litigant in person or the bases for such orders.

Appendix 3: Data Gaps on Self-represented Litigants - Productivity Commission

<i>Policy question</i>	<i>Data required</i>	<i>Available data and gaps</i>	<i>Data response</i>
Self-represented litigants			
<ul style="list-style-type: none"> • What proportion of court and tribunal users are self-represented? • What are their characteristics? • Why do people self-represent? • How does self-representation affect courts and tribunals? • Are measures aimed at assisting self-represented litigants effective? 	<ul style="list-style-type: none"> • Number of self-represented litigants relative to total users, by legal matter. • Demographic data on self-represented litigants. • Data on reasons why people self-represent. • Outcomes of self-represented litigants compared with other users, and how assistance measures affect outcomes. • Court/tribunal time and resources used to support self-represented litigants compared with other users, and how assistance measures affect this. 	<ul style="list-style-type: none"> • Most federal courts publish tallies of self-represented litigants. The Family Court and the Federal Court publish the most extensive information. • Few state and territory courts and tribunals publish data on self-representation and it is unclear whether they collect this information. • Published data are too high-level. Courts and tribunals do not hold demographic data on users. • Queensland Public Interest Law Clearinghouse (QPILCH) surveys self-represented litigants who have used its services. • It is unclear whether courts and tribunals collect data to assess the effectiveness of initiatives aimed at assisting self-represented litigants. 	<ul style="list-style-type: none"> • Greater and consistent reporting of proportion of self-represented litigants in courts and tribunals should be undertaken in each jurisdiction. • The Family Court or Federal Court are possible models for other courts in this area. • At a minimum, the number and type of legal matter should be collected to inform policy. • Ongoing collection of demographic data on court users may be too onerous. Instead, annual surveys of court users could be undertaken to study differences between self-represented litigants and represented users. • Smarter use of case management technology including software could capture information on case outcomes and use of court/tribunal resources so that effectiveness of measures could be assessed.
Pro bono			
<ul style="list-style-type: none"> • What are the most cost-effective pro bono programs? 	<ul style="list-style-type: none"> • Value of pro bono activities undertaken measured on a cost per hour, matter or client basis. Costs should be defined broadly to include costs to pro bono volunteers, CLCs, LACs or referral bodies, and opportunity costs. 	<ul style="list-style-type: none"> • Main sources of data are ABS (2009) and National Pro Bono Resource Centre (NPBRC) surveys, which define pro bono services differently. • Surveys detail the number of pro bono hours per lawyer and sometimes by law firm size and legal matter. • Pro bono services used by individuals are poorly captured by existing measures. 	<ul style="list-style-type: none"> • Consistent definition of pro-bono activities to be established. • The NPBRC and the ABS should coordinate in undertaking surveys on the value of pro bono services.

Extracted from *Access to Justice Arrangements*, Table J.1