

Evaluation of effectiveness
of
Queensland Public Interest
Law Clearing House
Self Representation Service
In Federal Court and
Federal Magistrates Court
Brisbane

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This independent research was commissioned by QPILCH
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PART ONE – INTRODUCTION

This report examines the effectiveness of the Queensland Public Interest Law Clearing House Incorporated (QPILCH) Self Representation Service pilot (“the service”) in providing legal services in the Federal Court and Federal Magistrates Court in Brisbane, Queensland. The brief of this evaluation was to examine the effectiveness of the service that had been running for approximately 8 months, at the time of the brief. The evaluation commenced immediately with an intention to consider the effectiveness in relation to the usage of the service, the types of services provided to clients and the effect of the service on the court, referring agencies and the clients for a 9 month period.

It is not the intention of this report to go into an in depth discussion about the issue of why people become self represented. There is a plethora of research both in Australia and in other common law countries that have been attempting to address the issue over the last two decades.¹ The reality is that people are self represented for varying reasons, some choose to act without lawyers, some find themselves in dispute with a represented party and cannot afford representation, or with an unrepresented party, and many are ineligible for legal aid funding and cannot afford to pay for legal representation. In addition to the reasons why people are unrepresented, some unrepresented parties have additional challenges such as language, disability, social or economic, mental or physical health problems, intellectual impairments, responsibility to others or difficult living arrangements such as location (remote or rural).²

Research has demonstrated that many self represented litigants find navigating the court system, the nature of the dispute, the emotional dimension to the dispute, the presence of legal representatives and a combination of many factors adds to the difficulty of managing the dispute effectively without the assistance of lawyers or third parties. It may be because the dispute is

¹ Australian Law Reform Commission (1996) *The Unrepresented Party, Adversarial Background Paper 4*; Cashen, C. (1998), *Legal Aid and Unrepresented Litigants: A Registrar’s Perspective, Family Court of Australia*, Paper presented to Third National Conference, Melbourne, 20 - 24 October 1998; Cranston, R. (1995), *Access to Justice: Background Report for Lord Woolf’s Inquiry* (Lord Chancellor’s Department, London); Dewar, J., B. Smith & C. Banks (2000) *Litigants in Person in the Family Court of Australia*, Research Report No. 20, (Family Court of Australia); Family Law Council (2000), *Litigants in Person*, Report to the Attorney-General prepared by the Family Law Council; Gamble, H. & R. Mohr, (1998), *Litigants in Person in the Federal Court of Australia and the Administrative Appeals Tribunal: a Research Note*, Paper presented to Australian Institute of Judicial Administration 16th Annual Conference, 4-6 September 1998; Hunter R, Genovese A, Chrzanowski A and Morris C (2002), *The changing face of litigation: unrepresented litigants in the Family Court of Australia* (Law and Justice Foundation of New South Wales); Hunter, R. (1998) ‘Litigants in Person in Contested Cases in the Family Court’, 12 *Australian Journal of Family Law*. 27. Lord Chancellor’s Department, (2001), *Emerging Findings: An Early Evaluation of the Civil Justice Reforms*, (LCD, London). Lord Woolf, (1995), *Access to Justice: Interim Report to the Lord Chancellor on the Civil Justice System in England and Wales*. Lord Woolf, (1996), *Access to Justice: Final report to the Lord Chancellor on the Civil Justice System in England and Wales*; Otton, Lord (1995), *Interim Report Of The Working Party Established by the Judges’ Council into Litigants in Person in The Royal Courts of Justice London* (RCJ, London); Owen, Charles L.; Ronald W. Staudt and Edward B. Pedwell (2004) *Access to Justice: Meeting The Needs Of Self-Represented Litigants*, Executive Summary; Pleasence, P., Buck, A., Balmer, N., O’Grady, A., Genn, H., and Smith, M. (2004) *Causes of Action: Civil Law and Social Justice*, (Stationery Office, London); Plotnikoff J. and R. Woolfson (2003), *Evaluation of the Impact of the Reforms in the Court Of Appeal (Civil Division)* (DCA, London); Plotnikoff J. and R. Woolfson (1998) *A Study of the Services Provided under the Otton Project to Litigants in Person at the Citizens Advice Bureau at the Royal Courts of Justice*, (LCD, London). Powles, H. & V. Bruce, (1993) *The Litigant in Person Discussion paper*, Australian Institute of Judicial Administration.

² Access to Justice for Litigants in Person (or self-represented litigants) A Report and Series of Recommendations to the Lord Chancellor and to the Lord Chief Justice , November 2011.

technically and legally complex, but it may also be as a result of compounding factors listed above. Research has also clearly demonstrated that the “the nature and intensity of their participation; the struggles they have comprehending law and procedure; and the importance of ensuring that substantive justice is done in our courts suggests that unrepresented litigants need help far more than they need approbation”.³

How the service operates

The service operates out of the Commonwealth Law Courts, North Quay in Brisbane. The service operates with two part-time staff: one part-time solicitor, for two days a week (Monday and Wednesday); and one part-time paralegal for one day a week, with a one off budget of \$35,000 funded by the Commonwealth Attorney-General’s Department and \$23,000 provided by the Federal Court itself. Additional work in the service is provided by volunteers from QPILCH member firms. Firms send a senior and junior solicitor to each session on Monday afternoons from 1pm-4pm. Each client is given a one hour appointment. The QPILCH solicitor is also available to provide three hour long appointments, which means the pilot service has the capacity of providing six hours of legal advice per week. The volunteers and staff members are trained to achieve a practical outcome in the allotted hour so that the client can leave with something to work on, for example, an affidavit, a draft pleading, a form⁴ or knowledge of how to proceed with their matter as a self represented litigant.

The service forms part of a suite of self representation services established by QPILCH and modelled on the Citizen’s Advice Bureau’s self representation service at the Royal Court of Justice in London.⁵ This suite of services includes a Self Representation Service in the trial divisions of the Supreme and District Courts and the Queensland Court of Appeal and one in the Queensland Civil and Administrative Tribunal (QCAT). The services all provide “discrete task legal advice and assistance through the progression of the client’s civil litigation, including drafting and amending pleadings, advice on disclosure and evidence, settlement negotiation and preparation for trial”.⁶

³ Moorhead, R and Sefton, M, Litigants in person, Unrepresented litigants in first instance, Proceedings, DCA Research Series 2/05, March 2005 at 265.

⁴ Woodyatt, Tony, Thomson, A and Pendlebury, E. “Queensland’s Self –representation services: A model for other courts and tribunals” (2011), 1 JJA, 1 at 2

⁵ As above.

⁶ As above at 2.

PART TWO – THE STUDY

Sources of data

The project was funded for one year in the Brisbane Federal Court registry. Due to budgetary and time constraints, the evaluation has taken a snapshot of a 9 month period from July 2011 to March 2012.

Client files

The researcher was given access to client files and service databases by QPILCH. All of the data was de-identified and all data in this report has been reported anonymously. The evaluation was commenced with an analysis of the data in the files, including demand, types of clients, referrals, status of matters, areas of law and assistance provided. This was cross-checked with QPILCH databases. These will be discussed in Part Three of this report.

Surveys

At the same time as the files were being analysed, a directed email survey was sent to registry staff, judicial staff, and referral agencies to invite them to participate in the study.⁷ Only seven people responded to the survey. All of those responses came from within the court. The response rate from the court staff numbers appears to be consistent with the 16.8% response rate of other socio-legal research of this nature.⁸ There were no responses from referral agencies outside of the court. Due to time and budgetary constraints it was not possible to pursue this further or draw any obvious conclusions about this lack of response from the referral paths from other sources but it is consistent with the client referral data maintained by QPILCH. However, this may be a worthwhile issue for QPILCH to follow-up in terms of public relations if the service were to continue into the future.

Interviews

Following the survey, a further email letter was sent inviting participants to participate in face-to-face interviews. This letter included details that outlined the purpose of the research, contact details for the researcher and the ethics approach to the project. The interviews were conducted in April 2012 by the principal researcher. The final number of interviewees was seventeen and included participants from the court (seven), QPILCH staff (three) and clients (seven).

Data collection

The interviews were semi-structured which allowed the participants sufficient flexibility to discuss any issues in more detail as they wished.⁹ Where possible, interviews were face-to-face. Some telephone interviews were necessary particularly with people in areas outside of the Brisbane CBD area. Some people in Brisbane were interviewed by phone to suit their schedules. All participants gave informed consent, and all agreed to have their interviews taped which they were advised and acknowledged were to be transcribed with anonymity.¹⁰

⁷ See Appendix 1 for all interview questions. These interview questions were adopted from previous research conducted by the research – Banks, C.A, Hunter, R and Giddings, J. *Australian Innovation in Legal Aid Services: Balancing Cost and Client Needs*, Socio-Legal Research Centre, Griffith Law School, June 2006.

⁸ Hunter, R, Genovese A, Melville A and Chrzanowski, A *Legal Aid Services in Family Law*, Justice Research Centre at 46.

⁹ See Appendix 2 interview documentation.

¹⁰ Lofland, J, Snow D, Anderson, L and Lofland L, *Analyzing Social Settings: A Guide to Qualitative Observation and Analysis*, 2005.

Prior to the interview all participants were given an Information Sheet which detailed the purpose of the research, the methodology, the way in which the data would be used and contact details in case there were any concerns about the ethical conduct of the research.¹¹

At the conclusion of the interviews, participants were asked if they had any questions or comments they would like to add. Most participants had further comments to make about other related issues. All participants were asked whether they would like a summary of the findings of the research.

¹¹ Mason, J, Qualitative Researching, 2002.

PART THREE - CLIENT DATA

Demand

During the months of July to March 2012 the service had 63 applications for assistance. The applications were distributed monthly as follows displayed in table below.

Number of Received Applications	
July	6
August	11
September	4
October	11
November	4
December	11
January	5
February	7
March	4
Total <i>(up to and including 12 March 2012)</i>	63

In the 9 month period, the database and files revealed that almost two thirds of the applications received by the service were “on foot” or underway (n=42). The service received 11 applications from applicants and 19 applications from potential applicants. The service also received 20 applications from respondents and 2 applications from potential respondents.¹² While the service aims to reduce unnecessary litigation, it is difficult to limit the capacity to keep the matter out of the court particularly when the application is from a respondent.

Areas of law

For the pilot, the service was limited to the following areas:

- Bankruptcy
- Discrimination
- Judicial review
- Privacy
- Competition and Consumer Law
- Appeals

The table below highlights the two major areas of law attended to as bankruptcy and “other”. We know that up until March 2012 “other” has only comprised of matters under the *Fair Work Act 2009*. Although the service had not originally intended to deal with these matters, demand for Fair Work legal advice has been so high the service has accommodated the needs for those clients.

¹² The remaining 11 applications related to requests from both parties to the same litigation for assistance with conciliation.

Areas of Law	
Bankruptcy	30
Discrimination	5
Judicial Review	2
Privacy	0
Competition & Consumer	0
Appeal	6
Other	20

Referral sources

The table below provides details of referrals to the service. Referrals from the court were by far the greatest source, closely followed by QPILCH. This is consistent with the response rate from initial contact with referral agencies, although it does indicate that agencies are aware of the service. This will be an important trend to continue to monitor in the future for this service.

Referral Sources	
Court	39
Other QPILCH services	10
Bar Association of Qld	1
Community Legal Centre	2
Court Network	1
Legal Aid Qld	3
Family/friend/colleague	2
Law Firm	3
Other	1
Not stated	1

Assistance provided

The table provided on the following page, outlines a breakdown of the type of assistance provided by the service, demonstrating the detail of work undertaken during appointment times required for clients for the two day per week service. In addition to the conduct of some appointments on a Monday, the staff solicitor undertakes research and follow-up on the second day.

Nature of advice	
General advice	38
Drafting (pleading and affidavits)	26
Dealing with defects	3
Responding to/drafting correspondence	3
Interlocutory applications	2
Directions/consent orders	1
Evidence	1
Alternative dispute resolution	17
Preparing for trial or hearing	5
After final order (inc appealing)	1
Total appointments (up to and including 12 March 2012)	97

Diversion out of courts

On the data available from QPILCH, three matters under way in the court were discontinued after advice given by QPILCH as to merits. On rough estimates this is a saving of over \$52,000 to the federal courts alone.¹³

Of the 65 applicants for assistance:

- There were a total 42 were matters on foot.
- 20 were from respondents.
- 11 were from applicants.
- Of the 11 applicants, 3 of those withdrew or discontinued the proceeding in which they were involved after receiving advice from the service.
- 2 were assisted and resolved their proceedings early by consent.
- 1 obtained pro bono representation through QPILCH's Referral Scheme.
- 1 discontinued for other reasons.
- 2 were assisted to a final hearing where one was unsuccessful and the other was awarded damages.
- Of the 20 respondents, 3 clients were assisted to negotiate a settlement of their dispute without the need for a final hearing.
- 19 people were considering instituting proceedings when they sought advice and 7 decided not to proceed after receiving advice.
- 6 more people did not commence proceedings for reasons other than advice from the service.
- 2 people were referred to other, more relevant services.
- 1 did commence proceedings but obtained representation.
- 7 clients were still being assisted by the Service at the time of writing.

¹³ This is based on an estimate on the only available figures from the Federal Attorney-General's Access to Justice Task Force Report *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (September 2009) reported that the net cost per service in the Federal Court in 2007-2008 was \$17,590.

Conclusion

While the documented data can provide the reader with a sense of what the service has provided to clients, it does not provide a complete reflection of the 'real' time spent on the files of some of these clients. As the service does not operate on billable hours, the figures captured can only reflect what solicitors have actually worked on with clients, particularly in terms of outcomes, such as documents, settlement offers etc. In many of the client files, it is obvious that a significant amount of time has been invested in making contact with the client, or providing support with the client over the phone outside of an allocated appointment time. Some of this may be attributed to the service being two days a week, and there need to be catch up for time lost when the service was not open.

Some of this may be attributed to a breaking in period when the original solicitor (now on maternity leave) was accustomed to working in private practice where clients are given as much time as necessary because they are paying for it. But this is purely speculative and requires much more analysis. The time spent on the files within this service is consistent with the demand and support that self represented litigants have been reported to require from legal research worldwide.¹⁴

¹⁴ See latest report by Civil Justice Council, Access to Justice for Litigants in Person (or self-represented litigants) A Report and Series of Recommendations to the Lord Chancellor and to the Lord Chief Justice, November 2011.

PART FOUR – SURVEY DATA

As discussed earlier, the survey was disseminated at the beginning of the research to a wide range of participants, including all of the Federal Court and Federal Magistrate Court staff, Court Network for Humanity organisation, Legal Aid Queensland, community legal centre networks and other relevant organisations. There were only seven responses returned anonymously to the researcher, and all were internally from within the federal courts itself. There were no surveys returned from outside referral agencies. There was little time to make further enquiry as to why this was the case, but as demonstrated from the client data, there were far fewer referrals from other agencies than the court. This may need further examination in the future.

Of the surveys returned one was from a judicial officer, two from registrars and four from registry staff.

Demographics of respondents

The age range of participants was 35 – 54, one participant chose not to reveal an age, all came from the Brisbane registry. Two males and five females responded. All of the respondents had heard of the Queensland Public Interest Law Clearing House Incorporated.

Understanding of the purpose of QPILCH service

Respondents all appeared to have a similar understanding to the purposes of the self representation services – for one respondent said:

To assist self represented litigants in bringing applications to the Court by providing them with information and basic advice in relation to the purpose or prospects of their application. To some extent this acts as a filtering process encouraging self represented litigants to reflect upon the utility of pursuing unmeritorious applications and to otherwise refine their applications to ensure they are more focused and/or appropriate.

And another said:

To assist litigants in legal proceedings before the Federal Court/ FMC. This may involve giving advice on whether they have a cause of action or defence, advice on the merits of their proposed claim or defence, and assistance to draft pleadings/affidavits.

Number of referrals

Participants reported between 15-48 referrals to the QPILCH service in the last six months.

Participants views on the most important stage for assistance

The participants in the survey were asked specifically about what stage of the litigation process they made referrals.

The responses to the questions on this issue (see Question 7 on the initial survey) obviously correlated with their role in the court process. By that I mean, front counter registry staff tended to answer that they may make referrals to people at a time when they are commencing and responding to proceedings (n=4) or initiating or responding to interlocutory step (n=1) and seeking further clarification about procedural matters.

The judicial officer reported the most important point in the litigation process for the service to help clients was preparing for trial as did a registrar, which is generally consistent with the stage at which the self represented litigant is likely to present to these participants. It is also important

to note the registrar also suggested an important point for the service to assist in commencing and responding to proceedings.

The survey asks respondents to respond to the effect (positive or negative) of the service on self represented litigants. All but one participant rated it as very positive (n=6) and one rated it one scale down from very positive (refer to form).

The survey asks respondents to respond to the effect (positive or negative) of the service on the court. All but one participant rated it as very positive (n=6) and one rated it one scale down from very positive (refer to form).

PART FIVE - SEMI-STRUCTURED INTERVIEWS

As discussed earlier, given the poor response from the survey information, the decision was made to try to elicit more information from face-to-face interviews from as many participants as possible in the short time available to the researcher. The aim of this arm of the research was to gain greater depth of understanding about the effectiveness of the service from the people at the coal face. This specific method was chosen to gather data for the evaluation that consisted primarily of interviews with providers of the service, related agencies and clients of the service, supplemented where possible by direct observation of the service in action. This 'triangulation' of data is a recognised technique which allowed the researcher to identify the issues related to the service from a range of sources.

Interviews

A small cross section of service providers were interviewed, including related agencies and clients of the service in order to identify the relevant issues relating to the service. The face-to-face interviews totalled seventeen individual interviews.

There were three interviews from providers of the service (QPILCH), seven interviews from related agencies service (court staff) made up of two judicial officers, one registrar and four registry staff and seven clients of the service.

Role of the service

All provider respondents and agencies agreed that the role of the service was to provide, free independent legal advice and assistance to people who may not otherwise have access to legal representation in the court system. This is consistent with the fundamental tenet of QPILCH that every citizen has equal access to law and to the courts.

All of the provider respondents and almost all of the agency respondents commented that the service played a large role in early intervention in court related proceedings. One participant commented:

The service is a conduit and a reality tester for a lot of litigants in person, some people come for their day in court and then realise their expectation won't be fulfilled by a court, so QPILCH can perform that objective task of informing the ill-informed who often have a very subjective view about justice.

Another participant said:

It's a proactive service in showing people how unmeritorious claims will end up and demonstrate to them in a very practical independent way which in the end is a huge cost saving to the court.

The independence of the service was a very important theme arising from discussions with agency respondents and with clients. One agency respondent participant said:

These people often mistrust lawyers but for some reason trust the judgment of the QPILCH lawyers because they see them as independent.

Another respondent said:

This service is enormously beneficial. Before the service we spent a lot of time talking to litigants about the process and difference between legal advice and information. Now we refer them to QPILCH. It's a package – they get the package, it's saved us so much time and that saves the court so much money. Every time you have to spend that time with a self represented litigant it's very,

very time consuming. QPILCH are independent and we value that independence. We are the court and we have to be very careful about what we say.

All of the participants agreed that prior to the service being available to the court, they were at a loss as to where to refer parties for these types of civil matters which may not have been appropriate.

One respondent said:

As civil legal aid funding no longer exists, where do we make referrals? We have had to rely on pro bonos or nothing.

All respondents agreed having a service on the door of the court, albeit limited at present, was such an integral part of the success of the service. Although all of the respondents believed that the demand for the service was so great it was needed on a full-time basis. One respondent said:

On the days they are not there we are back to the situation we were when they weren't there, the difficulty is, some of these people have made long trips into the court to try and file documents that are clearly deficient or you can sense or feel that a person's case does not have merit because you've been working here for so long, but I can't tell them that.

But if QPILCH were there on those days, I could get someone on the phone and send them over there, but even when I suggest they come back, they are suspicious of me because we are court staff. The independence of the service is critical, and you see that person will probably go on and file those documents and try and run that matter and imagine the saving to the court time by one or two appointments.

Most respondents believed the service wasn't standalone in that it required the involvement of law firms who provided advice, other QPILCH services and court infrastructure and Commonwealth Government funding. However all respondents agreed that the service had become an integral part of the way the court process was operating and provided an invaluable service to the court and the self represented litigants.

One respondent said:

In my view, it would be an extreme act of foolishness to not continue to fund this existing service and worthwhile expenditure of public money but such a value judgment is for the executive for the judiciary and is my personal view and observation.

Referrals

As relayed through the surveys, the court respondent agencies all acknowledged they refer to the service albeit in different ways. Registry staff members refer directly through face-to-face contact with clients on a daily basis. Judges and Federal Magistrates refer indirectly through their Associates while a matter is on foot in court on a needs be basis, so less frequently. All of the respondent agencies reported they had had some difficulties at times when making referrals because of the limited availability of the service.

Cost saving

It's very difficult to make accurate calculations as to the correct estimate in terms of costings in relation to the real cost of diversion away from the court. The most accurate figures in the 2010-2011 Annual Report do not provide a breakdown in a cost per service. As discussed earlier, we know that in a 9 month period the service diverted three matters away from a hearing in the court and a further seven from being commenced, which has roughly saved the court more than

\$175,900.¹⁵ In addition, 5 matters in the Federal Magistrates Court were settled out of court after legal advice from the service, but it is unclear as to exactly at what stage these matters had been discontinued and how these could be evaluated from a costs perspectives.

One respondent said:

We are such a busy court, and it's not our place to be telling people what to do, so we're between a rock and a hard place. If they don't have properly drafted documents, and we can't make sense of the cause of action, it's not our place and it's too resource intensive to be trying to tease these issues out. So now we have the option to give them the opportunity to seek legal advice from QPILCH, and we can then be satisfied that they have had that opportunity to be assisted. It has had such a significant impact on reality checking people who would normally remain in court intransigent for whatever reason.

While the financial burden is an important issue to consider, the social cost of diverting those unmeritorious claims cannot be quantified. One client said to me:

This would have taken an enormous toll on me, I was spewin', I couldn't sleep, I was pulling me hair out, I was smoking like a chimney, I was a misery guts to live with, but I just wanted justice and I thought going to court would be the answer, but it wasn't and it could've been the worst thing for me and for my family.

Clients

The profile of the clients I interviewed was to some extent, varied, including age range. There was an even gender mix, ethnicity, education and income. Some had initiated applications and some were responding to applications, most said they were unsure of court processes. All of the clients interviewed said they were grateful to have had the opportunity to have had legal assistance provided by the service.

One client said:

I had no idea what I was doing, I was pretty angry and confused. But the lawyer was really helpful but explained things to me in a really common sense way. I wouldn't have been able to do it without that help, and I would have been in much worse situation. I think the Judge was glad too. I'm very lucky that I got that chance to make an appointment and it was really easy around the corner from the court room.

One of the clients said they had spoken to a lawyer once before but not about this matter. Some of the clients said they had spoken to friends (n=3). Many of the clients said they had past dealings with lawyers (n=5) and all of the clients said they could not afford legal advice (n=7), although two clients said even if they could afford legal advice they wouldn't pay for it. One person expressed a cynicism of other lawyers because that person believed lawyers deliberately "strung matters out to make money for themselves, and don't make reasonable offers to make themselves more money". It was interesting to note, that after we discussed the legal assistance given by QPILCH lawyers, all of the clients said that they would have preferred to have had a lawyer from QPILCH and would have engaged those lawyers if they could afford them.

All of the clients indicated they needed a range of assistance but most said they needed legal advice about the issues in their case. Almost all of the clients also sought advocacy. One client

¹⁵ This is based on an estimate on the only available figures from the Federal Attorney-General's Access to Justice Task Force Report *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (September 2009) reported that the net cost per service in the Federal Court in 2007-2008 was \$17,590.

said “I really wanted her to stand up in court and just say what she was saying to me to the court”.

Most of the clients said they understood the information that they received from the QPILCH legal advice but one client said “it never really sunk in”, this client said “if only they could go that one step further and just get up and say it, it’s frustrating”.

All of the clients expressed appreciation for assistance in drafting documents. However there was still some confusion with some clients about the role of the court and the role of the service.

One client said:

I still don’t get why the court couldn’t just tell me where I went wrong and send me out to QPILCH to get it right, it seems simple to me.

Promotion

The promotion of the service appears to be an ongoing issue. QPILCH service providers realise that there may be gaps in the promotion of the service beyond the small court community and although brochures and posters are sent out, there is little follow through. For example, one provider respondent said “Yeah, I think we send them out, but I’m not sure what happens after that”. All of the court staff knew about the service but some suggested that was because they were in close proximity with it, and relied on it so heavily themselves. There is no suggestion however, that the service is underutilised because of lack of promotion, however if the service was to expand, there would need to be some attention to further promotion to other agencies.

Feedback

All of the feedback received was in relation to expanding the service beyond the allocated two days per week. All of the respondents raised a concern that there were too many clients falling through the gaps when the service was closed the other three days of the week.

One respondent said:

The court would be in a much productive and quite frankly, safer position, if that service operated 5 days a week, and we could send those clients, with deficient pleadings, and unmeritorious claims over to them straight up and get on with the real work of dealing with all the other people waiting patiently behind them. Don’t get me wrong, they’ve got a right to be here, but they need to be over there getting a good reality check, not here, using court resources where I talk around in circles because it’s not my job to tell them they’re never going to go anywhere.

One provider respondent said: “sometimes we miss deadlines because we are only there two days a week and we can’t do more than we are allocated”.

All of the agency respondents believed that the demand was so high the service could easily be expanded to other jurisdictions such as Fair Work and be open 5 days per week. This is consistent with the client data demonstrated in the tables on page 8 were approximately 30% of clients seen by the service were related to Fair Work claims.

Unmet needs

When asked about unmet needs, most people felt that there were two main unmet needs, a full-time service and full representation. I have discussed in other sections of this report the feedback from respondent agencies about the part-time function of the service. Save to say when asked about unmet needs, the issue arose again.

When asked about unmet needs, most people also thought that an unmet need was full representation. One agency respondent said “look in a perfect world, not one on a shoe string, everyone would have a lawyer”.

A couple of clients said if they had been given a choice, they would have chosen to have had a lawyer to advocate for them. One client said:

I don't know the jargon and it's exhausting to remember all of the things the right way around.

Although there have been some referrals for representation, not all clients are able to gain representation for their matter, paid or pro bono, and this is one of the challenges facing the self represented litigants and one identified as a continuing problem in recent research.¹⁶

The other unmet needs raised were related to referral networks in relation to mental health and allied health, as well as migration given the broad spectrum of clients who attend the Federal Court on any given day.

Other

Although there was no “other” in the questionnaire, the issue of the emotional demands of managing self represented litigants was a constant theme of the agency respondents. While all of the respondents were extremely sympathetic of the position of the litigants, they were also placed in a very difficult position, and often the brunt of the frustration and anger. One respondent said to me:

It's so draining, I want to help them but I can't, and they can be so rude, but I can't give them legal advice, and they don't get it and they go on and on until I feel like crying.

The advent of the service has relieved this pressure enormously on the court staff. One respondent said:

It's changed everything, I can explain the formalities and explain that legal issues can be discussed over there and point them in the right direction, end of story – phew. It's just so much better, and I don't feel sick every time I see them coming.

¹⁶ Above n13.

PART SIX - DISCUSSION

There is no doubt that the pilot service provided by QPILCH in the Federal jurisdiction in Brisbane is an incontrovertible success story. Since its inception almost a year ago now, it has carved a very important role for itself within the day to day work of the Federal Court and the Federal Magistrates Court by assisting self represented litigants with discrete task legal advice and assistance through the progress of the client's civil litigation, including drafting and amending pleadings, advice on disclosure and evidence, settlement negotiation and preparation for trial.

But more importantly, the service provides an extremely important opportunity to divert clients away from the court process altogether, saving the court an enormous amount of resources and relieving clients of an unenviable burden of running an unmeritorious matter which may often end in dire financial and social outcomes.

The interviews conducted suggest that all participants believed that the clients, court staff and judiciary have come to rely on the QPILCH service as a means of providing an independent, neutral legal assistance.

The data revealed that QPILCH is an invaluable service for all self represented litigants (both applicants and respondents) with a realistic view of their individual circumstances, focusing them on the right cause of action, understanding the risks involved in pursuing particular choices, allowing them the opportunity to consider alternatives to litigation and providing referrals to other services if appropriate.

The data also supported the view that the service provides an important intermediary role between the procedural function (registry) and the decision making function (judicial) of the courts.

We know self represented litigants are resource intensive and that prior to the service being instigated in the federal courts there was nothing of its type available to assist self represented litigants. The QPILCH service is based on relationship building between the client and the solicitor. This is very different from the traditional door of the court service where there is rarely such a relationship. In this type of service, building a relationship based on trust allows the solicitors to convey information to a client that is more likely to facilitate a client to take the appropriate path, even if it is information that a client may not want to hear, for example not pursuing an unmeritorious claim.¹⁷ In turn, this provides a significant efficiency to the court's time and resources.¹⁸

There was unanimous support for the service to be expanded beyond the current two days. From observation, there is no doubt there would be demand for the service beyond the original ambit funded to include Fair Work and migration which are highly sought after areas of legal advice and assistance.

Referral sources need to be given some more consideration by QPILCH, it is noted that some effort has been placed into building relationships with referral agencies, but it would appear to

¹⁷ Woodyatt at 2

¹⁸ See support of the service written by Keane CJ "Litigants in Person", paper delivered at the Supreme and Federal Court Judges Conference, Melbourne, January 2012.

be a little haphazard and should the service be expanded, there would need to be a more systematic approach to follow up with referral agencies.

In conjunction with referral agencies, it may be necessary to look beyond the traditional referral agencies to non-legal sources and build relationships with welfare and health agencies in order to support clients who need multi-disciplinary assistance, particularly if the service was to broaden into the areas of migration and Fair Work.

The paradox described by Lord Woolf has been somewhat ameliorated by the existence of a service such as the QPILCH service:

Only too often the litigant in person is regarded as a problem for judges and for the court system rather than the person for whom the system of civil justice exists. The true problem is the court system and its procedures which are still too often inaccessible and incomprehensible to ordinary people. (Woolf (1995), Chapter 17, para. 2.)

It is important to note that recent research in the United Kingdom has made recommendations that mirror the service currently being provided by QPILCH in the self representation services, particularly in providing advice that deters people from continuing a matter where a claim has no merits or poor prospects of success.¹⁹ The QPILCH service provides an opportunity for self represented litigants to see a path through the confusing legal terrain where it is often not possible to see the wood for the trees.

¹⁹ Above n13, see chapters 9 and 10.

Appendix One – Interview Questions

Client interview questions

1. Can you explain why you used the self representation service?
2. How did you know about the self representation service? Were you referred by someone?
3. Have you used the self representation service before?
4. What sort of assistance do you think you needed in court?
5. What service do you believe you got?
6. Was the self representation service what you expected?
7. Did you find the self representation service helpful?
8. Do you feel you had enough time with the lawyer to discuss your matter?
9. Do you think it was important to be able to speak to the lawyer face-to-face?
10. Did you feel comfortable speaking to the lawyer?
11. Did you feel confident using the self representation service?
12. Did the lawyer understand the information you gave them?
13. Did you understand the information you received from the lawyer?
14. Did the self representation service help you achieve the outcome you wanted? Can you please explain how?
15. Was the decision in your case a fair outcome? Could you please explain how?
16. Were you satisfied with the self representation service? Could you please explain how?
17. Would you have preferred any other legal service(s) to be available to you? Could you please explain why?
18. Do you have any suggestions on how the self representation service could be improved?

Referral agency interview questions

1. Can you describe how you have come in contact with the self representation service?
2. How often would you have contact with the self representation service?
3. What did you do prior to the service coming into place? i.e. what sort of referrals did you make (if any)?
4. Could you summarise what you see as the purpose of the self representation service?
5. Do you refer people to the self representation service? If so, why?
6. Is there an alternative service available? If so, what is it?
7. What role do you believe the self representation service fulfils?
8. Is the self representation service a stand alone service or does it operate in conjunction with other services? If so, how?
9. Does it replace another service? If so, how?
10. Would you say the self representation service is popular? If so, why?

11. How do clients know about the self representation service? I.e. is it promoted to clients and agencies?
12. If so, do you promote the self representation service? How and to whom?
13. Do you receive any feedback from your clients on the self representation service?
14. What sort of feedback do you receive?
15. Do you think the self representation service helps clients to gain the outcome they are seeking?
16. How do you judge this?
17. In your experience, do clients have any needs that are not met by the self representation service?
18. Do you believe the self representation service is easy for clients to use? Why or why not?
19. Who administers the self representation service? How is this done?
20. Do you have any expectations of how the service should operate? If so, what are they?
21. Do you think the service meets those expectations?
22. Can you suggest any ways that the service could be improved?

QPILCH interview questions

1. Could you describe how the self representation service operates?
2. What is the purpose of the service?
3. Why does QPILCH provide the service?
4. What organisational objectives of QPILCH does the service fulfil?
5. How does QPILCH administer the service?
6. Who administers the service?
7. Is the self representation service a stand alone service or does it operate in conjunction with other services? If so, how?
8. Is there an alternative service available? If so, what is it?
9. Are these services also provided by QPILCH?
10. Do you promote the service to clients and agencies? If so, how and to whom?
11. What feedback have you had from clients of this service?
12. Do you record the number of users of the service? If so, how?
13. How many clients use the service on average each week?
14. On average, how many clients would you see in a day?
15. Do you know how long, approximately, you spend with each client?
16. Do you think this is sufficient to meet the client's needs? Why or why not?
17. Would you say that the service is popular? Why do you say that?

18. Does the service help clients to gain the outcomes they are seeking? How do you judge this?
19. In your experience, do clients have any needs that are not met by the service?
20. What is the cost of the service?
21. What are your expectations of how the service should operate?
22. Do you think the service meets those expectations?
23. Are there any improvements to the service that you would suggest?

Appendix Two – Interview Documentation



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Dr Cate Banks
 LLB (Hons), B.Com Ph.D
 Voc. Grad Dip Family Dispute Resolution
 Grad Cert. Dispute Resolution
 Mediator (Nationally Accredited)
 Family Dispute Resolution Practitioner

CONSENT FORM QPILCH EVALUATION IN FEDERAL COURTS

Researchers: Dr Cate Banks

Institution: Cate Banks Consulting

Contact Details: Cate Banks 0435 359 742

This research is evaluating the first year of the self representation service conducted by Queensland Public Interest Clearing House (QPILCH) in the Federal Court in Brisbane. The evaluation is particularly interested in the views of service providers, agencies providing related services and clients who use the services on the operation and effectiveness of the service. The project will examine the service to assess whether it is an effective way of meeting clients' needs, and are an efficient and effective use of resources.

I understand that I will be interviewed for approximately half an hour. I give/do not give my permission for the interview to be recorded.

I understand that I am not required to participate in this research project if I do not wish to do so and that I can withdraw from the study at any time without needing to explain my reasons for withdrawing.

I have read the information sheet and this consent form. I agree to participate in the evaluation of QPILCH Self representation service in the Federal Court and give my consent freely. I understand that the project will be carried out as described in the information statement, a copy of which I have retained. I realise that whether or not I decide to participate is my decision and I understand that every attempt will be made by the researchers to preserve my anonymity. I have had all questions answered to my satisfaction.

I would/would not like to receive a summary of the research findings at the end of the project.

Name :

.....

Signature

Date

.....

.....

Researcher

Date

.....

.....



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INFORMATION SHEET FOR QPILCH EVALUATION IN FEDERAL COURTS

QPILCH has engaged the services of an independent consultant, Dr Cate Banks, to review the services of their Self Representation Service in the Federal Courts.

We are interested in whether you believe the service is an effective way of meeting clients' needs. We are interested in your knowledge of the service, how you may interact with the service and whether the service has had any impact on you or your organisation. We are also interested to now whether you believe the service could be improved.

Participation in the project will commence with a short survey. The survey is very short and should take no longer than 10 minutes. The survey can be completed electronically (work version) or alternatively printed in hard copy (pdf version) and completed by hand. Please return your completed survey by email to me at cate@cate.bankconsulting.com.au by 15 March 2012.

Your participation in this study is entirely voluntary. You are free to withdraw at any time if you do not wish to continue. It is completely up to you to decide if you wish to be involved.

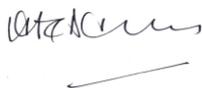
We assure you that your name and identify will remain completely confidential and every attempt will be made to minimise the risks that you could be identified from the information you provide. A summary of the research findings will be made available to you, on request, at the end of the project.

If you would like further information on any issue relating to this project, please call Cate Banks on 0435 359 742 pr cate@cate.banksconsulting.com.au.

We would appreciate hearing what you have to say about on self representation services.

Thank you for your assistance with this research project.

Sincerely,



Dr Cate Banks
