The Burdens of Self-Represented Litigants Within the Court System

Introduction

The entitlement to self-represent oneself in both criminal and civil actions has long been a fundamental right within the common law world.[1] Starting at least in the 12th century in England self-representation presented as a form of legal self-help within a system pessimistically described as too discordant for the layperson to navigate.[2] Correct or incorrect, the right to self-represent oneself is largely attributable or at least conflated with the general principle of equal access to the courts.[3] This paper looks at some of the negative burdens caused by, and to, self-represented litigants (SRLs) from a mostly Queensland perspective.

The negative burdens attributable to SRLs that this paper touches upon are court efficiency, resource and monetary costs, and the unrealistic expectations of SRLs. The negative burdens suffered by SRLs are in turn addressed with the difficulties that SRLs have in pleadings and interlocutory orders, disclosure, complying with rules, and time and cost expenses. Following the discussion of such burdens, this paper will look at some of the ways in which public and private parties have sought to ameliorate the burdens surrounding SRLs.

The Prevalence of Self-represented Litigants

In order to appreciate the full scale of the burdens, a picture of the prevalence of SRLs is needed. At the federal level SRLs range as high as 70-75% of all applicants in the Federal Magistrates Court and in immigration-related appeals to the High Court.[4] At the lower end of the federal level SRLs dip to 6% of all parties presenting before the Federal Court.[5] In Queensland, only the Court of Appeal (QCA) tracks statistics related to self-represented litigants.[6] As of 2016-2017, the QCA has reported that SRLs make up approximately 32.2% of all parties, which is up 8.2% from the prior year.[7] By logical inference, the actual raw number of SRLs in Queensland must be higher in the magistrate, district, and supreme court levels, though the actual proportion of SRLs to total applicants in those courts would be presumably smaller than the 32.2% found at the appellate level. From these statistics, a picture emerges that — especially at the appellate levels — SRLs compose a significant proportion of parties and therefore consume significant amounts of court resources.

[1] Rabeea Assy, *Injustice in Person The Right to Self-Representation* (Oxford University Press, 2015) 2 ('*Injustice in Person*').
[2] Baron Raoul Van Caenegem, *The Birth of the English Common Law* (Cambridge University Press, 1974) 17.
[3] *Injustice in Person*, above n 1, 15.
[4] Federal Court of Australia, *Annual Report* (2002–2003) 14; Australia Productivity Commission, *Access to justice arrangements: Productivity Commission Inquiry Report* (2014) 489.
[5] Ibid.
[6] Ibid app F 1003.
[7] Supreme Court of Queensland, *Annual Report* (2016–2017) 14 ('*Queensland Report*').

Part I: The Burdens Posed by SRLs

Anecdotal evidence points toward an increased burden that SRLs are having on the court system.[8] The burdens posed by SRLs that this paper focuses on are of roughly three groups. The first burden is that of SRLs as vexatious litigants. The second burden relates to the extra costs and use of court resources resulting from SRLs. The third burden concerns the unrealistic expectations of many SRLs and increased expenses caused to represented parties. A common tether throughout each of the above burdens is the impact these burdens have on the ability of the court to achieve both efficiency and justice in the post-*Aon Risk Services* Australia.

First Burden: Vexatious SRLs

The Commonwealth and each Australian state and territory, has legislated in some way or another for the limitation of vexatious proceedings, either by dedicated acts or by sections amended to judiciary statutes.[9] For Queensland the *Vexatious Proceedings Act 2005* mandates that those subject to a vexatious proceeding order must be listed publicly.[10] As of the 28th of August 2018 the Queensland document titled '*List of Persons Against Whom a Vexatious Proceedings Order has been made pursuant to the Vexatious Proceedings Act 2005'* has 26 entries.[11] On inspection, 25 of the 26 entries in the above-mentioned list were fully self-represented during the entirety of their hearings with only one partial exception.[12] The exception is misleading however as the single outlier still occurred during the portion of the proceeding conducted after the litigant became an SRL. The statistics bear out — in Queensland at least — that 100% of vexatious litigant orders were toward SRLs. Given the established duties of barristers and solicitors to the court, these results lend some statistical support to the anecdotal evidence that SRLs place specific burdens on the courts.[13]

While not all self-represented litigants are vexatious it appears that all vexatious litigants are self-represented. A leading Queensland case example is that of *Mbuzi v Hall* (*Mbuzi*).[14] *Mbuzi* demonstrates the burden that vexatious litigants can have on the court's ability to operate efficiently and affordably.

In *Mbuzi* the applicant commenced nine different applications all connected with an initial proceeding started in the then Small Claims Tribunal.[15] The total time elapsed between the first application and when Mr Mbuzi was declared a vexatious litigant was only one year and two months yet in this time the resources of the Small Claims Tribunal, Supreme Court of Queensland, the Queensland Court of Appeal, and even the High Court of Australia were expended by Mr Mbuzi.[16] To illustrate the breadth of the burden caused by Mbuzi's applications a conservative calculation of the average proceeding's finalised court costs is in order.

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[8] Iain McCowie, 'Self-represented Parties and Court Rules in the Queensland Courts' (2014) 24 *Journal of Judicial Administration* 18, 18 ('*Parties and Court Rules*'); Civil Justice Council Working Group (UK), *Access to Justice for Litigants in Person (or self-represented litigants)* (November 2011) 15.
[9] *Judiciary Act 1903* (Cth) s 77RN; *Supreme Court Act 1933* (ACT) 67A; *Vexatious Proceedings Act 2007* (NT); *Vexatious Proceedings Act 2008 No 80* (NSW); *Vexatious Proceedings Act 2005* (Qld); *Supreme Court Act 1935* (SA) s 39; *Vexatious Proceedings Act 2011* (Tas); *Vexatious Proceedings Act 2014* (Vic)*; Vexatious Proceedings Restriction Act 2002* (WA).
[10] *Vexatious Proceedings Act 2005* (Qld) s 9.
[11] Supreme Court of Queensland Registrar, *List of Persons against Whom a Vexatious Proceedings Order has been made pursuant to the Vexatious Proceedings Act 2005* (2018).
[12] Ibid. *note orders were accessed via the Queensland Court Registrar and the Queensland State Archive*
[13] *Parties and Court Rules* above n 8, 18.
[14] *Mbuzi v Hall* [2010] QSC 359 ('*Mbuzi*').
[15] Ibid [7]–[22].
[16] Ibid [7],[9],[12].

Finalised matters in the Queensland Supreme Court are reported as costing on average approximately $6,865.00.[17] The reported average of these costs include fully represented cases, cases that seldom lasted more than five days in length, and cases where court fees were promptly used to help partially offset court running costs.[18] In *Mbuzi* at least nine days — and almost certainly many more — were expended before Mr Mbuzi was stayed as a vexatious litigant.[19] While it is difficult to put a precise dollar figure on the costs for *Mbuzi*, a conservative estimate considering the salary expense of a supreme court justice — notwithstanding the appellate and high court applications — puts the absolute possible minimum cost of *Mbuzi* well above $13,500 considering only the wages of the justices alone.[20] Ultimately the total monetary cost to the system must have been in the tens of thousands of dollars given the various courts and staff hours involved.

The court's ability to operate efficiently not only includes the monetary costs associated with running the court but also the physical man hours available. A vexatious litigant such as in *Mbuzi* consumes both a disproportionate amount of the court's limited financial resources and its limited man hours in the form of judges, associates and other staff. The judicial staff, like all persons, can only work a limited number of hours and each lost hour is a lost hour to any other parties waiting to litigate in the courts. The court becomes double taxed by vexatious SRLs in monetary and manpower, resulting in fewer resources for others seeking court access.

The burdens caused by vexatious SRLs also extend to the increased costs incurred by the opposing — usually represented — party. A significant reason for many litigants to proceed as an SRL is due to the costs of obtaining representation.[21] Instances of vexatious litigation may be particularly costly due to the likelihood of multiple and needless applications such as in *Mbuzi*. In many cases, both vexatious and not, represented parties bear higher legal representation costs for more hours than they would in represented-to-represented litigation. Additionally, even when victorious, represented parties often do not collect any of their awarded costs due to the frequent impecunious nature of the opposing SRL.[22]

Since the decision by the High Court in *Aon Risk Services Australia v Australian National University*,[23] efficiency has become a part of, rather than distinct from, a question of judicial fairness. Given the monetary and man hours costs of vexatious SRLs, the question remains open as to how the system can accommodate these rare but costly individuals without impugning on the right of one to access the courts of justice.

Second Burden: Consumption of scare court resources by SRLs

Ontologically distinct but similar to the burdens posed by a vexatious litigant are the burdens the court can incur from a bona fide SRL. Appellant Justice Keane (as his Honour then was) remarked in relation to one SRL that '…litigation is not a learning experience'.[24] Many judges appear to agree with the inferred frustration found in Justice Keane's remarks.[25] Judges in the

[17] *Queensland Report*, above n 7, 5.
[18] *Note* this dollar figure also represents the post Supervised Case List for self-represented litigants
[19] *Mbuzi*, [14].
[20] Queensland, *Queensland Government Gazette*, No 54, 16 March 2018, 276. *Note calculated for 300 working days per annum*
[21] The Senate Legal and Constitutional References Committee, Parliament of Australia, *Inquiry into Legal Aid and Access to Justice* (2004) [10.12] ('*Senate Committee*'); Australia Productivity Commission, *Access to justice arrangements: Productivity Commission Inquiry Report* (2014) 490–491.
[22] *Mbuzi*, [58],[63],[69].
[23] *Aon Risk Services Australia v Australian National University* (2009) 239 CLR 175.
[24] *Robertson v Hollings (Imagination Television Ltd)* [2009] QCA 303 [11].
[25] Giddings J, McKimmie B, Banks C and Butler T, *Evaluation of the Queensland Public Interest Law Clearings House Self Representation Service* (Griffith University and University of Queensland 2014), pp 11–13 ('*Giddings Report*').

District and Supreme Courts of Queensland often report that SRLs frequently need assistance in fixing defective proceedings.[26] As SRLs are more likely to have pleadings in need of fixing the propensity for adjournments and additional hearings increases.[27] As with the vexatious litigant, the bona fide SRLs inexperience often causes additional hearings resulting in similar budget and manpower costs on the courts. Bona fide SRLs are not tracked separately as to their finalisation cost but likely suffer the same types — but not amount — of resource consumption as vexatious SRLs. Much of this cost may be down to the large percentage of SRLs that do not seek preliminary legal advice before beginning proceedings.

The Queensland Public Interest Law Clearing House Incorporated (now known as Lawright and called that going forward) found that only 27.4% of SRLs that sought the Lawright SRL advice service sought help prior to commencing proceedings.[28] Of the remaining 72.6% of users, 53% of SRLs accessing the Lawright service did not do so until some interlocutory step while the remaining 19.6% only sought advice after judgment.[29] The low numbers of SRLs seeking preliminary legal advice appear to be a significant overall drain as those that do access self-help services like Lawright are more often successful in their proceedings and less likely to cause costly and inefficient burdens on court expenditure and manpower time.[30] Most SRLs are not vexatious litigants and accept the findings of the courts.[31] Bona fide SRLs do consume less of the court's resources than a vexatious litigant yet there is still an increased burden caused by inexperience and underutilization of pre-proceeding legal advice from groups such as Lawright.

Third Burden: Expectations of and by SRLs do not reflect reality

The third burden caused by SRLs on the courts and other parties is only partially the fault of the SRLs. Judges and practitioners have complained that SRLs have inaccurate ideas of what the court expects from them and what they ought to expect from the courts.[32] SRLs report being surprised when during initial hearings the presiding judge or magistrate has no prior knowledge of the dispute.[33] Given the popularity of televised American legal dramas like *Law and Order* and more contemporaneously, *Suits* — and their inaccuracies even of the American legal system — it is likely the case that a typical SRL has no appreciable knowledge of the Australian common law adversarial system. Any incorrect expectations by SRLs would contribute to court inefficiency likely in the way of adjournments and orders to fix defective pleadings or moderate court misbehaviours. SRLs are frequently reported to waste time by pleading immaterial facts, tendering immaterial documents, and structuring their pleadings incorrectly, usually in a style more akin to affidavits.[34] Within England and Wales these shortcomings by SRLs — or 'Litigants in Person' — have resulted in judges giving lenient, lengthy, expensive, and burdening advice that risks the borders of impartiality, fairness, and efficiency.[35] This 'kid glove' treatment of SRLs often to the detriment of the represented party also reverberates among the Australian judiciary.[36]

SRLs uninformed natures often result in inaccurate expectations expected of themselves by and from the courts. Expectational burdens, unlike traditional monetary and resource costs, are

[26] Ibid.
[27] Federal Magistrates Court of Australia, *Annual Report* (2003-2004) 2.
[28] *Parties and Court Rules* above n 8, 19.
[29] Ibid.
[30] *Senate Committee*, above n 21, [10.66],[10.74].
[31] David Giles and Maurice Rifat, *Vexatious Litigants and Civil Restraint Orders* (Wildy, Simmonds & Hill Publishing, 2014) 3.
[32] *Giddings Report*, above n 25; *Parties and Court Rules*, above n 8, 21.
[33] *Parties and Court Rules*, above n 8, 21.
[34] Ibid 22.
[35] *Injustice in Person*, above n 1, 110–116.
[36] *Mbuzi*, above n 14, [25].

largely the result of a system not designed for SRLs. On the one hand, it is inescapable that an SRL with inaccurate expectations is responsible for the costs their inexperience causes. On the other hand, it is still reflective that what is a burden for the goose is a burden for the gander. The expectational burdens caused by SRLs on the court system are in turn a burden on SRLs by a system designed to accommodate litigating practitioners with all their knowledge and formality. It is from this point the focus shifts from the burdens caused by SRLs to the burdens suffered by SRLs.

Part II: The Burdens on SRLs

Pleadings and Interlocutory Orders

SRLs have trouble with both the aspects of pleading as well as abiding by the rules that govern pleading.[37] Within Queensland, the rules that govern pleading are set out in Chapter 6 of the *Uniform Civil Procedure Rules 1999* (Qld) (UCPR). Of those who accessed the aforementioned Lawlink legal service, 24.1% roughly a quarter of all help given, was regarding either pleading a statement of claim, a defence, a response, or responding to struck out pleadings.[38] This paper now looks at three particular rules of the UCPR concerned with pleading that may cause difficulties to SRLs: rules 149, 150, and 171.

Rule 149 of the UCPR provides the basic requirements for pleading a statement of claim, defence or counterclaim.[39] Rule 149(1) requires that pleadings must be as brief as possible, must contain all facts material to the claim, must divulge any matter that would otherwise be in ambuscade to the other party, must specify the relief sought and must contain any acts or provisions that are to be relied upon by the party.[40] Additionally, Rule 149(2) allows a party in pleadings to raise a question or plead a conclusion on a point of law provided it is supported by the material facts.[41] In submissions received by the Senate Legal and Constitutional References Committee for the 2004 report of *Inquiry into Legal Aid and Access to Justice*, SRLs were directly identified as being less able to adduce relevant material facts as well as to plead them cogently.[42] For Queensland, this disadvantage may be due in part to the fact that neither rule 149(1) nor any definitions within the UCPR stand to aid an SRL on what a 'material fact' means. An SRL likely has little to no familiarity with precedentially bound common law concepts such as the materiality of facts. The difficulty in grasping materiality is illustrated in the case of *Sykes v Queensland Gas Co Ltd* (Sykes). In *Sykes,* an SRL's statement of claim was struck off and ordered to be repleaded by a suitably qualified and independent expert witness as the only basis for the facts that materially supported the claim came as an opinion of the plaintiff.[43] The extent to which SRLs can misunderstand the application of rule 149 has even resulted in exceedingly long and immaterial statements of claim resulting in a claim's total dismissal.[44]

Rule 150 of the UCPR sets out a veritable list of matters that must be specifically pleaded if relevant for any statement of claim, defence, or counterclaim.[45] Rule 150 and its five sub-rules is replete with technical legal terminology. Given that most SRLs are lay persons it is likely SRLs will

[37] *Parties and Court Rules*, above n 8, 22.
[38] Ibid 19.
[39] *Uniform Civil Procedure Rules 1999* (Qld), r 149 ('*UCPR*').
[40] Ibid r 149(1).
[41] Ibid r 149(2).
[42] *Senate Committee*, above n 21, [10.44].
[43] *Sykes v Queensland Gas Co Ltd* [2007] QCA 277, [22]–[24].
[44] *Primrose v Cooloola Shire Council* [2007] QPELR 596, [10]–[14].
[45] *UCPR*, r 150.

struggle to identify matters such as estoppel, duress, misrepresentation, or the full meaning of testator, let alone cogently plead these matters as demanded by rule 150 in the briefest way possible.[46] Just on the weighty technical legal terminology alone is rule 150 of the UCPR a daunting hurdle for the uninitiated SRL, especially when considered conjointly with the pleading requirements of brevity and materiality as found under rule 149.

Rule 171 of the UCPR empowers the court to strike out pleadings either in part or in whole.[47] Rule 171(1) gives five broad grounds for which the court may strike pleadings under 171(2).[48] The court's discretion to strike out pleadings is triggered when pleadings are materially insufficient to support the claims or defences, or are otherwise one of a variety of abuses of court procedure: whether vexatious, unfair, unduly delaying or otherwise unnecessary.[49] In a similar vein to rule 150, rule 171 has several technical legal concepts such as vexatious, reasonable cause of action, and abuse of court that are technical legal concepts. Lengthy pleadings or repeated failure to fix a troubled pleading will often cause an SRL to have their entire pleadings struck. An example is *Primrose v Cooloola Shire Council* where the SRL's entire statement of claim was struck for reasons of undue delay.[50] SRLs may not always appreciate the gravity or consequence when portions of their statement or their entire statement becomes struck under rule 171. In *Lucy Xiaoshuang Lu v Petrou* the QCA noted that the SRL before them had tried to continue proceedings several times despite repeatedly failing to fix her struck pleadings.[51] Where SRLs fail to appreciate the consequences of a struck pleading the resulting outcome may be a summary judgment against them. An SRL that has been handed down an adverse summary judgment resulting from defective pleadings must then go on the stressful and more complicated appeals route which is likely to fail without legal assistance.[52] Where an SRL fails to react properly to the consequences of insufficient pleadings they may be met with an interlocutory application for dismissal under rule 576 or a summary judgment against them under rule 292.[53] The impact of interlocutory orders is significant as up to 30% of all advice that Lawlink users sought involved default and summary judgments following defective pleadings.[54]

While nearly any rule in the UCPR may pose a burden for SRLs the pleadings rules of 149, 150, and 171 have been singled out for either their consequential importance or legal difficulty. SRLs will doubtless become more stressed and less successful when trying to formulate pleadings according to rules 149 and 150. Where an SRL does fail to appreciate the mandates of those rules he or she may find themselves reckoning with struck out proceedings under rule 171 and all the stress, interlocutory orders, delays, and appellate applications that may follow it.

Disclosure and Time Frames

SRLs are often mentioned as failing to properly follow the rules of disclosure. Reports from the United Kingdom, New Zealand and Australia mention a general trend of SRLs

[46] Ibid rr 149(1)(a),150(1)–(4).
[47] Ibid r 171.
[48] Ibid r 171(1).
[49] Ibid r 171(1)(a)–(e).
[50] *Primrose v Cooloola Shire Council* [2007] QPELR 596, [6]–[7].
[51] *Lucy Xiaoshung Lu v Petrou* [2011] QCA 226. [46].[50]–[51].
[52] Queensland Public Interest Law Clearing House Incorporated, *Incapable of Justice: Capacity and Self-Represented Civil Litigants – Submissions to the Public Trustee of Queensland* (2009) 5.
[53] *UCPR*, rr 576,292.
[54] *Parties and Court Rules*, above n 8, 19–20.

misunderstanding of the need for disclosure.[55] The rules governing the duty to disclose are found in Chapter 7 of the UCPR.[56] While it is not difficult to find anecdotal evidence that SRLs have a difficult time with disclosure, direct case examples are few and far between.[57] One illustrative case example is that of *Williams v Stone Homes Pty Ltd* where an exasperated Justice Dorney tries to explain to an SRL the consequences under rule 225 of the UCPR for failing to disclose documents.[58] It may be that the difficulty for SRLs to understand the importance of disclosure is similar to the difficulties mentioned above for pleadings. An SRL would need to be aware of the material nature of a fact or document to conclude the need for that fact or document's disclosure.

When asked SRLs often complain about the amount of time the court system takes, both in taking months or years to conclude an entire matter, to giving short windows to prepare and file certain documents.[59] The Lawright service reports that interlocutory and post-judgment advice users complain about the short time windows for the filing of documents.[60] For instance, SRLs may amend or be ordered to amend a faulty pleading but then find themselves 'under the clock' in having to serve the amended pleading on the opposing party within eight days.[61] On the opposite end of the spectrum, SRLs likely suffer increased stress and high monetary costs as opposed to the professional lawyers where lawyers are pursuing the actions as part of their living. Sometimes it may even arise that the difficulty of certain evidence will necessitate further delays and further costs such as when experts are needed, increasing the stress on the SRL and their pocketbook.[62]

Judgment, Enforcement, and Appeals

On top of the burdens facing SRLs regarding pleadings, disclosure, and time frames, it is to be expected that SRLs for many of the same reasons will struggle with judgments, filing for enforcement, and lodging appeals. Of the roughly 20 percent of persons using the Lawright service post-judgment 7.2% of SRLs were looking for enforcement advice while 12% sought advice on filing an appeal.[63] Once a judgment has been rendered an SRL then encounters a new set of burdens.

On judgment, an SRL may be surprised to learn that she may owe indemnity costs where her opposing party had, prior to judgment, made an offer to settle that would have benefitted her more than the judgment. Under rules, 360(1) and 361(1) a party that refuses a settlement offer that would have been more favourable — even while still being victorious at judgment — is liable to pay the other party's costs on an indemnity basis.[64] These cost findings are not at the discretion of the judge and instead follow automatically, the only partial exception being if the affected party was the defence and can demonstrate why this indemnity cost is not appropriate.[65] Considering SRLs may

[55] Civil Justice Council Working Group (UK), *Access to Justice for Litigants in Person (or self-represented litigants)* (November 2011) 22; *Parties and Court Rules*, above n 8, 22; Ministry of Justice (NZ), *Self-Represented Litigants: An Exploratory Study of Litigants in Person New Zealand Criminal Summary and Family Jurisdictions* (2009 July) 15.
[56] *UCPR*, ch 7.
[57] Ministry of Justice (NZ), *Self-Represented Litigants: An Exploratory Study of Litigants in Person New Zealand Criminal Summary and Family Jurisdictions* (2009 July) 15; *Parties and Court Rules*, above n 8, pp 19–20, 22.
[58] *Williams v Stone Homes Pty ltd* [2014] QDC 064, [8]–[10].
[59] Civil Justice Council Working Group (UK), *Access to Justice for Litigants in Person (or self-represented litigants)* (November 2011) 37.
[60] *Parties and Court Rules*, above n 8, 23.
[61] *UCPR*, r 385.
[62] Justice Margaret Wilson, 'Expert Evidence, Self-Represented Litigants and The Evidence of Children' (speech delivered at the Address to Queensland Industrial Relations Commission Customs House, Customs House, 2 September 2005) 9.
[63] *Parties and Court Rules*, above n 8, 19.
[64] *UCPR*, rr 360(1),361(1).
[65] Ibid r 361(2).

have more of an emotional attachment to their claims such SRLs may be less capable of entertaining a reasoned settlement offer either by passion or some sense of principle. Even when ultimately victorious an SRL may be shocked to see their award or other remedy reduced by having to compensate the opposing party's legal costs having refused on emotion or principle a prior settlement offer. SRLs by logical conclusion, are not lawyers and are prohibited from seeking a costs order as defined in the UCPR.[66] An SRL may find themselves incredulously paying the costs of the lawyers of the party that has just been shown to have wronged them, and maybe even to a degree of negating the whole fiscal point of the proceeding to begin with. The tactical disadvantage that SRLs face by not being able to claim costs may be offset by the usually increased costs to represented parties, but that likely does not console an affected SRL all that much.

Costs orders aside, a successful SRL will likely have to apply to the court to get an enforcement order. Depending on whether the SRL was awarded a purely monetary award, a proprietary award, or a mixture, the SRL will need to seek an order from the court under chapters 19 and or 20 of the UCPR.[67] In brief, first-time SRLs will often be surprised to learn that further court action is needed to effect their remedy.[68] Between chapters 19 and 20 an SRL has to navigate up to 127 rules just to enforce a monetary and or proprietary judgment.[69] An SRL who may have just spent upwards of twelve months or more, struggling through pleadings, interlocutory orders, and discordant time frames is now forced to pick apart what it is the judgment has awarded and under what rule or two of 127 that they must invoke in order to enforce their judgment.[70]

For those SRLs that were unsuccessful, the question turns to the burdens they face when seeking to file an appeal. Regardless of the capacity or experience of any given SRL all applicants face the same limited window of 28 days from the judgment in which to decide, draft, and file their notice of appeal.[71] Whereas an SRL in the original action may have had months in which to draft or respond to the proceeding the same SRL now has 28 days in which to digest the trial judge's reasoning, deduce what error at law was made, draft why that error was made, explain what decision should have been made, and finally file the application.[72] Certainly, while practical difficulties of a layman SRL drafting the appeal documents in 28 days are evident, the biggest sole challenge to an SRL may be in identifying an error at law in the judgment, as it is an error at law, and (almost always) not an error of fact that may be appealed.[73]

Part III: Ameliorating the Burdens

The burdens posed by and on SRLs have garnered the attention of both the public and private levels of the legal field. Groups such as Lawright were among the first to offer non-representative legal advice to SRLs and were instrumental in effecting new practice directions in Queensland.[74] Since the formation of Lawright other similar groups have started in other Australian

[66] *UCPR*, r 679.
[67] *UCPR*, ch 19,20.
[68] *Parties and Court Rules*, above n 8, 18.
[69] *UCPR*, rr 793–920.
[70] *Parties and Court Rules*, above n 8, 19.
[71] *UCPR*, r 748(a).
[72] Ibid r 747.
[73] LexisNexis, *Halsbury's Laws of Australia,* (at 05 May 2016) 325 Practice and Procedure, 'VIII Appeal – (2) Grounds For Appeal or New Trial)' [325-11215].
[74] *Parties and Court Rules*, above n 8, 26.

jurisdictions such as South Australia's JusticeNet SA while many law firms now offer law clinic support to SRLs which double to also provide law students with valuable legal experience.[75]

Publicly, the Queensland Supreme Court website has information for potential SRLs on the likely experiences they will face during the process — such as alternative dispute resolution orders — while also giving general tips and contact information. Additionally, the Queensland Law Handbook offers information to SRLs while the Queensland Law Society also sets guidelines and standards for solicitors so as to deal fairly and efficiently with SRLs.[76] Most dramatically the Supreme Court of Queensland sought to ameliorate the burdens on and by SRLs with the creation of the Practice Direction 10 of 2014 which created a supervised case list directed specifically at self-represented parties.[77]

Practice Direction 10 of 2014 (PD10) specifically sets out its goal of living up to the purpose of rule 5 of the UCPR by trying to ensure efficiency and justice for SRLs.[78] PD10 sets out to accomplish the goals of efficiency, court cost savings, alternative dispute resolution, and fairness in several ways. First, PD10 requires that cases with an SRL must be reported to the appropriate registrar by either the SRL or any represented party aware of the fact.[79] Secondly, PD10 instructs the list manager of the case list to send any SRL a kit which includes the practice direction, a questionnaire, and other information and steps for the SRL to be as efficient as possible.[80] Thirdly the presiding supervising judge will hold a review hearing prior to any trial date applications so as to consider and comment on any interlocutory orders that may be needed.[81] During the review hearing, the supervising judge is likely at her or his discretion to order or advise alternative dispute resolution, and will entertain any applications pursuant to the UCPR, such as amending pleadings under rule 377, or applications for striking out pleadings or seeking summary judgments pursuant to chapter 9.[82] Lastly, PD10 puts an expectation on any represented party to regularly keep the presiding judge informed as to the current state of the proceedings up to any potential trial date.[83] Directions 6,7 and 8 go on to advise of the minimum preparation required of both parties and how to file for trial dates. Overall, PD10 is concerned with the early management of both the court and the parties so as to be able to fix problems before they degenerate into inefficient and costly losses on the courts and parties alike.

Conclusion

SRLs make up a significant and growing portion of parties in litigation. The negative burdens that SRLs pose on the court system stem primarily from their inexperience resulting in error-prone pleadings and complying with the rules and orders stemming from the UCPR. Vexatious litigants pose a specific drain on court resources and manpower even in their relatively small numbers. In turn, the burdens suffered by SRLs can often lead to their causes of action being

[75] JusticeNet SA, *Self-Representation Service* (12 October 2018) < http://www.justicenet.org.au/get-help/self-representation-service>; Lawright, *Law School Report* (2017-2018) < http://www.lawright.org.au/_dbase_upl/LR_Law_School_reportv2.pdf>.
[76] Queensland Law Handbook, *Help for Self-Represented Litigants*, (19 December 2016); Queensland Law Society, *Guidance Statement No 9 – Dealing With Self-Represented Litigants* (11 December 2017).
[77] Supreme Court of Queensland Practice Direction 10 of 2014, *Supervised Case List Involving Self Represented Parties: Civil Jurisdiction Brisbane* (SRL Supervised Case List Practice Direction) ('*PD10*').
[78] *PD10*, 3.1,5.2.
[79] Ibid 2.
[80] Ibid 4.2.
[81] Ibid 5.
[82] Ibid 5.4.
[83] Ibid 5.5.

summarily dismissed and may be chalked up to the technical nature of the UCPR rules. However, the public and private spheres of the legal community have begun taking these burdens seriously. Publicly, solutions such as PD10 is an example of the courts taking an active role to ameliorate the burdens posed by and to SRLs. PD10 is designed to give ample breathing room and help for SRLs when commencing, responding, and litigating their claims. While privately, groups such as Lawlink help to offer legal advice at all stages preliminary and post-judgment to SRLs which in turn shrink the burdens on SRLs and improve efficiency. Between the proactive adoption of PD10 by the courts, the growing popularity of the relatively nascent Queensland Civil and Administrative Disputes Tribunal and the emergence of private help groups such as Lawright, the next ten years will be telling on how successful the amelioration of the burdens posed by and on SRLs has been.

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