

LITIGANTS IN PERSON AND THE ADMINISTRATION OF JUSTICE

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INTRODUCTION

1 This paper addresses the increasing size of the Federal Court’s litigant cohort who are litigants in person; and some of the challenges this presents for the Court, its Judges, Registrars and staff, for other litigants and for litigants in person themselves. This paper also explains, for the first time publicly, the suite of initiatives the Federal Court is employing and proposes to employ to better manage proceedings where one or more litigants are representing themselves. Our Court by no means suggests we have all the answers, but we are attempting to adapt our processes not in just one way, but in many complementary ways, and to establish a better evidence-based approach to assisting and dealing with litigants in person.

2 This is a topic that generates strong views on all sides. It needs to be approached with balance, but firmness, and a constant focus on the objective of finding ways to resolve disputes between parties in ways that bring finality to proceedings – recalling “just *resolution*” is the objective,¹ not forgetting the “resolution” part. Methods adopted must take proper account of considerations of limited resources – human and otherwise, of cost, and of fairness and respect to all concerned, including but not limited to litigants in person.

THE DATA

3 This topic needs a framework involving both data and human accounts. I will deal first with the data.

4 The Federal Court has operated a digital court record from 2014. Doing so makes data collection easier, so we have capacity to search and examine data about our proceedings, including in a longitudinal way. However, developing the appropriate tools to identify what proportion of the Court’s proceedings feature litigants in person will need additional human resources to establish an evidence base. It is especially difficult to capture numbers relating to litigants in person who are respondents. The Court is also looking at how it can use cloud-based tools and artificial intelligence to improve the accuracy of our data.

¹ *Federal Court of Australia Act 1976* (Cth) s 37M(1).

5 One innovation we have introduced is to carry out quarterly data collection from Judges' Chambers about litigant in person matters in each Judge's docket.² The following data is from the latest data collection, which was carried out in December 2025.

- (a) As of that time, 367 matters in Judges' dockets involved a litigant in person. That is across 58 full-time Federal Court Judges and 2,524 matters in total. So, litigant in person matters made up about 15% of all matters in Judges' dockets.
- (b) Well over three quarters of those matters fell within just three of the Court's National Practice Areas: a third were in the **Commercial & Corporations** NPA, another third in the **Administrative and Constitutional Law and Human Rights** NPA, which includes migration matters, and just under 20% in the **Employment & Industrial Relations** NPA.
- (c) Those 367 matters overwhelmingly involved unrepresented applicants; 23% involved unrepresented respondents.
- (d) Finally, 82% of those matters were in the Court's original jurisdiction, 12% were in the Court's appellate jurisdiction but being dealt with by a single Judge, and 6% were appeals heard by a Full Court.

6 The Court also collects data about the number of matters, other than Full Court matters, allocated to Judges that involve a litigant in person who is the applicant, plaintiff or appellant at the time of the allocation. This includes allocations of interlocutory hearings, such as applications for review of Registrar decisions, and applications for leave to appeal. Generally, therefore, this data captures litigants who are representing themselves either from the start of a proceeding, or early in the course of a proceeding.

- (a) In 2024, there were 247 such allocations. In 2025, the number was 405, an increase of 64%.
- (b) Notably, litigant in person allocations in the E&IR NPA increased by 200%, from 19 to 57.
- (c) There was also an above-average increase in litigant in person allocations in the Taxation, C&C, and Other Federal Jurisdiction NPAs. The latter includes the Court's defamation jurisdiction.

² This data excludes native title matters but does include litigants who are granted leave by the Court to appear on behalf of a corporation. There is a tangible proportion of litigants in person in native title matters.

- 7 Many would-be litigant in person matters are never allocated to a Judge’s docket because the documents relied upon are not accepted for filing.³ In 2023, there were 80 occasions where documents were not accepted for filing. The number grew to 143 in 2024, then 244 in 2025. Overwhelmingly, these are documents rejected for filing on the basis that a Registrar is satisfied that the allegations constitute an abuse of the process of the Court or are frivolous or vexatious.⁴ As Registrars’ refusals to accept documents for filing increase, there appears to be a corresponding increase in applications for review of those decisions. In some of these proceedings, applicants will then bring various interlocutory applications or, if they are ultimately unsuccessful, institute appeal proceedings.⁵
- 8 Proceedings involving litigants in person tend to involve more interactions with registry staff, Registrars and Judges, and thereby tend to consume more time than proceedings involving represented parties. The Court recently undertook a comparative sampling exercise of 30 matters across three different practice areas, each with a high proportion of litigants in person: ACLHR, the Migration subarea,⁶ and E&IR. Half of the sample in each practice area involved a party that was a litigant in person and the other half involved parties all of whom were represented. All matters in each sample set shared a degree of similarity, and each proceeded to final hearing. The rationale for this exercise was to start to understand the potential impact of litigant in person matters on judicial workload. In each sample of recent matters, comparisons were made of the volume of sets of orders made by the Judge, the number of emails saved to the Court files, and the number of listings in each proceeding (including administrative listings and with each day of a hearing counting as a separate “listing”).
- 9 The level of email correspondence recorded on the Court file of ACLHR and E&IR matters involving litigants in person was about three times higher than for files within those practice areas which did not involve a litigant in person. Similarly, the number of court listings and orders made in ACLHR and E&IR proceedings involving litigants in person was about two to

³ *Federal Court Rules 2011* (Cth) r 2.27.

⁴ *Federal Court Rules 2011* (Cth) r 2.26.

⁵ See, eg, *Sandilands v Registrar Parkyn* [2025] FCA 358 (Wigney J), refusing an extension of time and leave to appeal from *Sandilands v Registrar Parkyn* [2025] FCA 41 (Perry J); *Kitoko v Registrar, Registry of New South Wales, Federal Court of Australia* [2025] FCAFC 41 (SC Derrington, Neskovicin and Vandongen JJ) dismissing an appeal from *Kitoko v Registrar, Registry of New South Wales, Federal Court of Australia* [2024] FCA 1119 (Nicholas J); *Ferdinands v Registrar Burns* [2024] FCAFC 105 (Cheeseman, Goodman and McEvoy JJ), dismissing appeals from *Ferdinands v Allaway, National Duty Registrar (No 2)* [2023] FCA 12 (O’Sullivan J) and *Ferdinands v Registrar Burns* [2023] FCA 1646 (Charlesworth J).

⁶ Migration matters fall within the ACLHR NPA. However, for the purposes of this exercise, migration matters were treated separately from the rest of the NPA.

three times higher than proceedings where all parties were represented. Interestingly, however, there was no significant difference in the number of orders, emails or listings in the Migration sample between matters with litigants in person and matters without.

10 This corresponds with other data we have available to us. In preparing for this speech, I conducted a survey of the 58 full-time Judges of this Court, with about a 50% response rate. Actual experiences are an important part of the evidence base. While the numbers of litigants in person in Migration are very high, Judges considered they do not tend to involve a proliferation of interlocutory applications. Responses included:

“Migration cases are generally conducted in a reasonable manner. Most others are conducted irrationally and unreasonably.”

“Generally speaking, in migration matter unrepresented litigants are co-operative and reasonable, and attempt to engage as best they can with the process. However, uncooperative, difficult and/or unreasonable conduct, particularly through correspondence prior to trial, is common in particular in bankruptcy and discrimination law matters.”

“...in the migration jurisdiction, [litigant in person] matters usually go smoothly. But in general, in all other fields [litigant in person] cases rarely go smoothly.”

11 Why this should be so, particularly given the high-stakes nature of many migration matters, is an interesting question. Of course, characteristics of many migration applicants such as not having English as their first language, lack of familiarity with the Australian legal system, or not having ready access to computers may account for some of these differences. A description of “smooth” may possibly conceal an inability to engage with the judicial system, or deference to those in positions of power.

12 Outside of the Migration subarea, the survey results are also revealing of the challenges for Judges and Chambers staff:

- (a) 86% of Judges said that proceedings involving litigants in person require “much more time” compared to other proceedings.
- (b) Almost all Judges said that this additional time was taken up in dealing with correspondence to Chambers, case management hearings, and interlocutory applications. A majority of Judges also said they spent additional time preparing for hearings, writing judgments, and conducting final hearings in proceedings involving litigants in person.
- (c) About half of Judges said that proceedings involving litigants in person were “much longer”, with almost all other Judges saying the hearings were “a little bit longer”.

- (d) 66% of Judges said that litigants in person make interlocutory applications more frequently than represented parties. These were said to be recusal/bias applications, review of Registrar decisions, applications for leave to appeal interlocutory decisions, and discovery applications.
- (e) On the other hand, 66% of Judges also said that litigants in person can conduct their cases in a reasonable and timely way, with only 27% answering that this “rarely” or “never” occurs.

13 Judges noted that cases are often run reasonably where litigants in person are particularly attuned to the relevant legal and factual issues. With focused case management efforts, Judges also said that litigants in person could behave reasonably and in accordance with appropriate timetables. I note that such intensive case management can impose burdens of its own. This is all to say, as I will highlight later in the paper, the picture in relation to litigants in person is not all negative. What these responses reveal is the importance of appropriate assistance and interventions with litigants in person.

14 People represent themselves sometimes out of choice but more often out of circumstance. The Court needs to support them to understand how to conduct their proceeding effectively and efficiently.

WHAT KINDS OF PROCEEDINGS AND ISSUES

15 As I said, there is a human narrative to be recognised in dealing with litigants in person. Courts are sometimes criticised for how they deal with litigants in person, but the community, and litigants in person themselves, should be assured that Judges, Registrars and Court staff strive to understand the human dimension of a proceeding, as well as the legal dimension.

16 Proceedings and issues that commonly arise with litigants in person in the Federal Court include:

- (a) where a non-citizen’s visa is cancelled because the Minister suspects that the person does not pass the character test;⁷
- (b) where a person seeks to set aside sequestration orders under the *Bankruptcy Act 1966* (Cth);

⁷ *Migration Act 1958* (Cth) s 501.

- (c) where a director – sometimes, a legally trained director – of a company seeks to represent that company or otherwise litigates in person in relation to that company;
- (d) where a person alleges discrimination of some kind;⁸ and
- (e) *Fair Work Act 2009* (Cth) proceedings, where a person alleges that adverse action has been taken against them by their employer.⁹

17 One example of frequent litigation by litigants in person is a spousal couple who were both made bankrupt as a result of proceedings in relation to a company of which they had previously been directors. The couple have commenced fifteen actions to attempt to set aside or annul the bankruptcy or challenge decisions made by the trustee in bankruptcy, including eight attempts to appeal against judgments of the Federal Court.¹⁰ A further example is a litigant in person who, in the Fair Work jurisdiction, had costs ordered against them in relation to an unsuccessful interlocutory application to file a fifth iteration of a statement of claim.¹¹ As many of you will know, the Fair Work jurisdiction is typically costs-neutral and the bar for a Judge to order costs is high.¹²

18 Many litigants in person may not understand the limited nature of an appeal. They may seek to submit new evidence or re-examine witnesses. They may feel that the first instance hearing and decision was unfair, and that a ‘new hearing’ is the best way to get a determination in their favour. Anecdotally, there seems to be a greater tendency for litigants in person to seek leave to appeal from an interlocutory decision. So, not only are litigants in person making more interlocutory applications, but they seem to also be seeking to appeal more often from unsuccessful interlocutory applications.

19 An example of a discernible tendency by litigants in person to make more recusal/bias applications is an adverse action case in which a litigant in person alleged bias after the Judge drew to the parties’ attention a Full Court decision that was beneficial to the litigant in person’s case.¹³ The litigant in person was ultimately partially successful in their claim, but this characteristic of a level of mistrust of the judicial system, alongside a determination that the

⁸ See, eg, *Age Discrimination Act 2004* (Cth), *Disability Discrimination Act 1992* (Cth), *Sex Discrimination Act 1984* (Cth), *Racial Discrimination Act 1975* (Cth).

⁹ *Fair Work Act 2009* (Cth) s 342.

¹⁰ See generally *Frigger v Professional Services of Australia Pty Ltd* [2026] FCAFC 9 at [6]–[12], [150].

¹¹ *Grofski v Peabody Energy Australia PCI Mine Management Pty Ltd (No 2)* [2026] FCA 124.

¹² *Fair Work Act 2009* (Cth) s 570.

¹³ *Yu v ACT Education Directorate* [2025] FCA 335 at [74]–[76].

system may nevertheless provide “justice”, is apparent in the behaviour of many litigants in person.

THE DIVERSITY OF LITIGANTS IN PERSON

20 There is a diversity of circumstances in which people represent themselves in the Federal Court.

- (a) There is what I might describe as the ‘once off’ litigant – a person with a particular grievance or situation, who comes to court only in one proceeding. Many migration applicants fall into that category. About 50% of our litigants in person could be seen as in this category. So too some of the people who file proceedings in the E&IR NPA, where they have had their employment terminated.
- (b) Next are people who might begin with one piece of litigation, but then, because of what happens in that litigation, become embroiled in other proceedings. For example, a person lodges Freedom of Information applications to obtain documents to use in their litigation and does not receive the documents they consider they were entitled to. They then commence review proceedings of the FOI decision, which end up in the Federal Court on appeal from the Administrative Review Tribunal or come directly by way of judicial review. Another common example is a person whose proceeding is unsuccessful and who receives a costs order, which they either contest or do not pay and they then become the subject of bankruptcy proceedings by the party in whose favour the costs order was made. There may be some large policy issues around these latter circumstances – in terms of the purpose of seeking costs orders in this context, and whether bankruptcy proceedings for unpaid costs orders are a proportionate response to nonpayment, or whether at a policy level there could be other consequences for those who do not comply with costs orders.¹⁴
- (c) Then there are the repeat litigants who have become quite experienced litigators, whether in one court or many courts, and whose litigation tends to springboard off one case and into another. Of course, many parties who are legally represented may also be frequent litigators in the Federal Court, or in other courts. Frequency of litigation itself is not the issue, it is what the litigation is about, and then how it is conducted where a person does not have legal representation. The repeat litigants in person tend to be the ones who occupy a disproportionate amount of judicial and court time and resources,

¹⁴ I have in mind here consequences such as needing leave to commence a proceeding where there is an outstanding costs order. That of course could also apply to represented parties.

and a disproportionate amount of time and resources from other parties. That is not to say they are always difficult. Rather, it is the fact of multiplicity of proceedings, whether all in the Federal Court or in many courts, that means their litigation is challenging to manage.

- (d) Next is the category of people who might be described as querulous or vexatious litigants. People in this category are well known to all courts and to many institutional and regular respondents.
- (e) Falling into one or more of these categories are sovereign citizens. They are, in general terms, people who reject the legitimacy of the state and who do not consider themselves to be subject to the same laws as everyone else. Their arguments are based on pseudo law.¹⁵

21 As part of our data collection in December 2025, our staff assigned each litigant in person who was then before the Court into one of the first four categories above. Of all the litigant in person matters in Judges' dockets at that time, 50% involved a first-time litigant; 30% involved an experienced litigant; 17% involved a frequent litigant; and 3% involved a vexatious litigant. Perhaps unsurprisingly, those last two categories of litigant – frequent and vexatious – were involved in a disproportionately high number of matters. That is, although 20% of litigant in person matters involved either a frequent or a vexatious litigant, litigants of that kind represent just 7% of the total number of litigants in person with matters before the Court.

22 To that end, I note that the number of formal vexatious litigant orders made by the Federal Court under s 37AO of the *Federal Court of Australia Act 1976* (Cth) has increased in recent years. Ten such orders were made in 2025, as against four in 2024 and six in 2023.

23 Despite the diversity of litigants in person, there are clearly certain characteristics that are common to most, if not all, litigant in person applicants. An understandable one is a personal dedication to their particular grievance. This is perhaps an obvious statement, but the depth of belief in having been wronged is what can drive some of the conduct that is most challenging for courts. Conversely, litigants in person often exhibit and express a heightened belief in the importance of the administration of justice and the role of the courts, albeit that this belief is generally tailored to their own world view, and this can again be where challenges arise. Justice

¹⁵ For a recent example of an attempt to deploy pseudo-law arguments in the Federal Court, see *Tredders Investments Pty Ltd as trustee for Warren Tredrea Trust v Channel 9 South Australia Pty Ltd (No 3)* [2025] FCAFC 125.

is often conflated with success. That is no doubt true of many represented litigants as well, but those people have an independent intermediary whose professional task involves attempting to explain risks, and then adverse outcomes, to their client. That critical intermediary presence is of course absent for litigants in person.

24 A number of litigants in person have expressed their appreciation for the way that their matters have been dealt with in the Federal Court. Oftentimes, these statements seem to suggest that the litigant in person's preconceived ideas of how the Court might operate have proven to be untrue, much to their relief and satisfaction.

25 For example, one litigant in person made the following comments in closing submissions at the end of a five-day trial:

... I've been dealing with this court for over two years. I would like to say publicly that the registry staff, the court staff, your Honour's associate, security have all treated me in a fully respectful manner. I've never felt as though I was a second class citizen just because I was self-represented. Frankly, the service has been excellent. Even more important than that, and more important to me than even this case, is that I feel a deep sense of gratitude, your Honour, to live in a country where a citizen, any citizen, even one of modest means, ... as they traverse their lives and come across circumstances of perceived injustices, they can come before a body such as this and be granted a hearing.

26 Another wrote the following in an email to a Registrar's assistant following a Registrar conference:

I came away with an amazing impression of how competent and well-prepared the Registrar was, and she was absolutely neutral and totally nice.

27 Finally, another litigant in person provided an interesting account of their experience in response to a call for submissions on the Court's Litigants in Person Practice Note. After discussing some of their frustrations with earlier aspects of their litigation, the litigant in person said the following:

It was only after I appeared for the first time in front of the Awesome [name of Federal Court Judge] #legend that a judicial officer walked out, instantly addressed me by name, identified my status as applicant and obviously had read my submissions. I cried later that day and was on a happy high for a week. Not realising til later that the very simple act of what HH did, had validated my presence in the system. This renewed my commitment to do my best procedurally, only file what was necessary since it was being read, and I no longer felt like a pebble in the system's shoe.

28 Unfortunately, however, not all of the Court's interactions with litigants in person are so positive. Indeed, there are also a number of more challenging characteristics that are shared by many litigants in person.

- 29 One is a heavy focus on process, practice and procedure, as the survey showed with more than two thirds of Judges experiencing more frequent interlocutory applications than represented parties.
- 30 Many Judges who responded to the survey mentioned recusal and bias applications as frequent interlocutory applications made by litigants in person. This brings me to another characteristic existing alongside the fervent belief in courts as the place where justice is delivered: suspicion of, and mistrust in, Judges and Registrars at an individual level, and in the legal profession. The irreconcilable nature of these dual sets of beliefs may explain many of the behaviours that courts experience from litigants in person.
- 31 Particularly challenging are those litigants in person who harbour conspiracy theories about the other parties, or their lawyers, or about the Court and even individual Judges. These attitudes can create issues around processes such as discovery, where a litigant in person simply may not accept what another party says about documents in its possession, custody or power. Mistrust of lawyers representing other parties in a proceeding can be a source of conflict. A litigant in person may have developed that mistrust from their own experience, or it may be more generalised. Lawyers representing other parties are the targets for some of the extreme behaviours that Judges, Registrars and Court staff also experience.
- 32 Likewise, the availability of online information can mean that litigants in person conduct detailed searches of Judges in order to discover as much as they can about them, often as part of a litigant in person determining if the Judge is likely to meet their own perceptions of fairness and justice, or whether they see the Judge as biased. Bias applications are a frequent and particularly challenging aspect of many litigant in person matters. The allegations made against Judges can become very personal.
- 33 Such applications – and the material adduced on them – can be one of the most stressful parts of a litigant in person matter for a Judge. That is especially so if the litigant in person continues an online narrative about their proceeding and about the Judge, which in some cases is sent to Chambers so that the Judge can see what the litigant in person is writing about them in a public forum.
- 34 For this reason, in considering how courts should approach dealing with litigants in person the potential effects on judicial wellbeing must not be ignored. Of course, some Judges will profess that it is like water off a duck's back. They are fortunate. We are not all built with such

robustness, and indeed it is often the Judges who are the most compassionate and humane who are affected the most by challenging litigants in person.

WHY AN INCREASE IN FILINGS

35 Reflecting on the descriptions I have given about the diversity of litigants in person and the diversity of their proceedings, I want to focus now on some particular circumstances that in my view are responsible for both the increase in the numbers of filings by litigants in person and the challenges courts are facing.

36 It is obvious that the enormous changes in speed and modes of communication brought about by, first, the internet and digital communications, and second, social media, have had a big impact on litigation by litigants in person.

37 Some of this has been in a positive way. The Federal Court has required all documents to be filed digitally since 2014.¹⁶ There are exceptions to this requirement which can be used in particular by litigants in person, where they can attend a Registry and have their documents scanned into digital form.¹⁷

38 Digitisation of the court record makes court documents more accessible to parties, including litigants in person. It allows people to compose documents in final form in the privacy of their own homes, at a time that suits their needs. It removes the need to attend registries, which can be a positive step for people who may have a mobility issue, live regionally or rurally, or are simply not comfortable coming into official spaces like court registries. It can make the process less intimidating. These are all benefits to the administration of justice.

39 Digitisation of the court record, and the ability to present documents in digital form also has less positive aspects. It can encourage cutting and pasting from other documents in inappropriate ways – both from lawyers and litigants in person. Particularly, this can lead to inaccurate information in documents, or formulaic documents not tailored to the particular proceeding. It can encourage longer documents and a lot more annexures or attachments. It can encourage litigants in person to resort to documents produced by others and that are available on the internet. Of course, now it also leads more readily to the use of generative artificial

¹⁶ See [1.1] of the Court’s ‘Technology and the Court’ Practice Note (GPN-TECH), as published on 25 October 2016.

¹⁷ See [6.16] of the Court’s ‘Technology and the Court’ Practice Note (GPN-TECH), as published on 25 October 2016.

intelligence.¹⁸ Again however, not all these aspects are invariably less positive. Where a court can assist litigants by providing digital forms, templates and the like, the quality and accuracy of court documents may be improved. Generative artificial intelligence has the capacity to help people produce higher quality documents, better summaries of facts, and more clearly expressed submissions. Like any other technology, the key is in how it is used, not the fact that it is used.

40 The more available the courts' decisions are, and the more available documents in proceedings are (eg through online files), the greater the access to information for litigants in person becomes. A non-lawyer may become lost in the morass of arguments, articulations of causes of action and modes of proving a case. And if not lost, then anxious to put in every conceivable fact, argument, case and allegation that they may have picked up along the way, thus spending huge amounts of time working through all the digital resources now available. It is challenging enough for lawyers, Judges and Registrars to sift through the volume of jurisprudence now available online, for many litigants in person it must be overwhelming.

41 We cannot discuss the increase in litigants in person without recognising that the cost of legal services provides a barrier to many people in civil proceedings. I confine my remarks here to civil proceedings. Such proceedings may involve the power of the state being wielded against people, and the corporations they have formed, such as in regulatory proceedings. Livelihoods and the foundation of the lives led by people – employment, housing, financial survival in the face of bankruptcy, family structures – may all be at stake in civil proceedings. Bodily integrity, health and other personal rights such as privacy, access to information, freedom from discrimination, may be in issue. In our court, people in migration proceedings frequently have their liberty at stake, because liberty for non-citizens is tied in this country to the holding of a valid visa.

42 Legal costs are often a barrier to protecting or advancing these interests, and the fact that most of our jurisdictions remain ones where the loser pays the winner's costs provides an additional barrier. That is topic for another day. Nevertheless, the costs of legal services and the patchwork availability of legal aid or other publicly funded legal services mean that many litigants feel they have no choice but to represent themselves, or in fact have no choice. The generosity of

¹⁸ For a recent exposition of this issue in relation to the Fair Work Commission, see Justice Adam Hatcher, 'A disrupted future: Artificial intelligence and the Fair Work Commission' (Presentation to the Victorian Bar Association, 18 February 2026).

the legal profession in providing pro bono legal services remains the predominant amelioration of this barrier to access to justice.

43 Finally, the Federal Court exercises jurisdictions that primarily arise under statute. Statutes are complicated. With all due respect to their drafters, they can be very hard to follow. The Court also applies the common law, another complicated creature. Comparatively to some other Australian courts at different levels of the justice system, we are not a high-volume jurisdiction. However, our jurisdictions and processes can have great complexity. That makes the task for litigants in person all the harder.

FEDERAL COURT REFORMS AND THEIR OBJECTIVES

44 While courts and Judges might on occasions bemoan some of the approaches taken by some legal representatives to the conduct of litigation, my basic proposition is that the administration of justice is best served by litigants being legally represented. Just as it is true, as a general proposition, that houses are best built by those objectively qualified and regulated to do so, and medical services provided by those regulated and qualified to do so. Lawyers are well trained, and actively and closely regulated in this country, and their professional obligations are substantial, including those which exist in provisions such as s 37N of the *Federal Court of Australia Act 1976* (Cth), to ensure that the litigation of those they represent is conducted fairly, efficiently and in an appropriate and proportionate manner to the matters at stake. Lawyers are also first and foremost officers of the Court, a fact which means Judges and Registrars should be able to place a high level of trust in what they put before the Court and to rely on what they tell us.

45 The Court does have an existing, and effective, pro bono referral program, particularly in Migration matters. The Court's Litigants in Person and Pro Bono Project is also currently undertaking a review to see what can be done to improve connections and referrals to available pro bono legal services. But while the provision of pro bono legal services is a welcome addition to the assistance the Court can secure for some litigants in person, it is not an overall answer to the increasing presence of litigants in person and the additional challenges they raise for courts. It would be helpful for a revitalised dialogue to occur between the courts and government about enduring, broad and sustainable public funding to a wider group of litigants in civil proceedings in courts such as the Federal Court. As I have said, the administration of justice is enhanced and improved, and operates far more effectively and efficiently, when all parties are legally represented.

46 Absent any wider initiatives, the present reality for courts, including the Federal Court, is that we must manage the likely continuing increase of people representing themselves.

47 The Litigants in Person and Pro Bono Project is a collaborative Judge and Registrar led project. The key feature of such projects is that they are being designed and led by those who administer justice in the Federal Court. The Judicial Registrar responsible for the Project has been given some workload relief from her usual duties so she can manage this particular project, which is the largest the Court has undertaken in recent years. Other staff have been diverted from some of their principal duties to assist. My judicial and registrar colleagues voluntarily undertake this work in addition to the discharge of their ordinary workloads, and I am grateful to them all for their commitment to improving the way the Court operates. I hope these kinds of projects will remain a feature of how the Federal Court intends to conduct itself as a contemporary national court.

48 Our reforms and initiatives have been developed and tailored for the Federal Court, as a Court which operates both as a trial court in matters ranging from the relatively short and straightforward to the exceedingly lengthy and complex; and as an appellate court being an ultimate appellate court as of right for federal matters. As I will explain, the fact that we exercise appellate as well as original jurisdiction provides the Federal Court with an opportunity to develop its own appellate guidance for single judges and parties.

49 Operating as a national court means there must be resources available in all of the Court's registries. We will do our best, but the objectives and positive outcomes which are capable of being achieved under this project will not be achieved to the level they could be, without additional funds being made available.

50 The one lesson we have learned through this project is that working with litigants in person to ensure they can have fair and reasonable opportunities to conduct a proceeding through to finalisation requires human resources and human beings. It is personal, intensive and time-consuming work. The benefits can be there for all participants, but the complexity should not be underestimated. That complexity includes ensuring the Court has available to it the capacity to record and analyse data to provide an evidence base for its initiatives and to measure the benefits and outcomes of its reforms.

Early intervention

51 The first suite of initiatives involves early intervention, at and shortly after proceedings being commenced.

52 Before new litigant in person proceedings can commence in the Court, Registrars undertake basic triaging to determine whether originating applications sought to be filed by litigants in person are an abuse of process on their face and should, therefore, be rejected for filing. Currently, applications by litigants in person that are accepted for filing will then generally proceed to a first case management hearing before a Judge.

53 The Court is proposing to significantly expand the role of Registrars, so that all first-time litigants in person (and other litigants in person, where appropriate) participate in a preliminary case management conference with a Registrar. This procedure would facilitate provision of basic information to litigants in person about Court procedures, deal with unmet legal requirements such as service of documents, address fundamental issues like poorly drafted originating process and pleadings, and allow Registrars to ascertain critical information from litigants in person in order to make informed decisions about tailored services, including pro bono referrals to existing funded and private services. A matrix of questions and topics will be developed to facilitate the triaging process. Connections will be made between the Court and providers of pro bono services with experience in the Court and the types of claims made by litigants in person in the Court's jurisdiction.

54 Such a conference may occur instead of a decision to refuse to allow an application to be filed, if the Registrar can see in an individual case that there may be a meritorious claim that the litigant in person needs assistance to articulate. Or it may occur after documents are accepted for filing. Plainly, this kind of process requires more intensive resources at Registrar level, but we are confident that the application of resources at this level and in this way is likely to make a real difference to the conduct of proceedings by litigants in person, to the way causes of action are formulated, and to how procedural steps are undertaken.

55 At and after this initial conference stage, the Court also intends to undertake in-depth exploration of how artificial intelligence can be utilised to create efficiencies and counter the expanding workload issues and errors that result from litigants in person using artificial intelligence for legal advice and assistance. It is proposed that Registrars work closely with the Court's IT staff to identify realistic and efficient artificial intelligence options that can be trialled under Registrar supervision early in litigant in person proceedings.

56 For example, one initiative that warrants further investigation is for closed artificial intelligence to be used in these online preliminary Registrar conferences to collate answers given by litigants in person into a more coherent chronological exposition of the claim that the litigant in person seeks to raise. This may produce a document that would assist the Court in triaging the claim by the litigant in person and aid in identifying the appropriate referral to be made for legal assistance. For litigants who are unable (or unwilling) to seek legal assistance, artificial intelligence may assist in the proper articulation of claims and supporting evidence. In other words, the Court seeks not to deny the reality of the use of artificial intelligence by litigants in person, but to find ways to support its use that might be helpful to the articulation and resolution of proceedings.

57 There is also the possibility that, in time and with access to customised artificial intelligence, answers given by litigants in person could be transformed by artificial intelligence into an appropriately drafted court document, such as an affidavit or concise statement of their claim. The availability of such documents would likely reduce the time spent by Judges in seeking to understand the nature of the claim that the litigant in person seeks to advance, in order for Judges to be able to manage the case appropriately. For this to occur, the Federal Court will need to be resourced with relevant artificial intelligence program licenses and staff experts to maximise the integration of new artificial intelligence tools. If litigants in person are going to use artificial intelligence, which in my opinion is now inevitable, it is better they do so with assistance and under conditions likely to produce documents that are as accurate and useful as possible.

58 The conversion of the Court's website into a more user-friendly format is also in planning. While the website already has layers of pages for litigants in person, and hyperlinks to relevant legislation, rules and forms, we accept that it can be presented in more accessible ways. Saying as much conceals the cost of such a conversion.

59 One of the Litigants in Person and Pro Bono Project's objectives, of course, is to ensure litigants in person have fair access to all the information they need. But, as I hope this suite of proposals is beginning to convey, the objective is also to assist litigants in person to make better-informed decisions through the carefully timed provision of litigant in person-friendly information at each stage of a proceeding. Fairness requires that Judges and Registrars have a sufficient level of confidence about how accessible information is to litigants in person before any consequences for noncompliance are imposed.

60 It is also always the case that we can do better in the provision of interpreting and translation services and graphic style presentations, if we have the funds to do this. We should be in a position to provide information in all of the major languages other than English spoken by our litigant cohort. We should be able to ensure litigants in person have access to interpreters where they need them, including the early stage of a proceeding when they are interacting with Court staff. Providing these services comes at a cost.

61 The Court's strategy also involves tailored service coordination by specialist staff. If funding is available, the Court plans to introduce Litigants in Person & Pro Bono Coordinators in each Registry across Australia. We already have two such coordinators, but they must operate nationally at the moment, and it is not enough. There are eight Federal Court registries around the country and to implement these reforms the Court needs coordinators in at least the five main registries, to meet local needs. They can coordinate processes such as the Registrar preliminary conference and help ensure litigants in person attend these and are well prepared. Coordinators could also ensure litigants in person in bankruptcy proceedings are directed to financial counselling services. Litigants in person are often unaware of these services or do not understand how they can help. These Coordinators would directly link litigants in person to external services, such as Commonwealth-funded federal self-representation services offered in each State/Territory, currently operated by Justice Connect (Victoria, NSW, Tasmania and the ACT), LawRight (Queensland), JusticeNet (South Australia) and Legal Aid Western Australia.

62 Recent consultations with organisations who administer self-representation services has made it clear that tailored referrals from the Court to these services would not only ensure litigants in person receive much-needed legal assistance, but also offer enhanced efficiencies for these services.

63 These federally funded self-representation services are an excellent innovation. They recognise the reality of people feeling they have no choice but to represent themselves, or wishing to do so. These services have the capacity to offer initial legal advice and assist litigants in person in drafting court documents. As part of the Court's early intervention approach, our Litigants in Person & Pro Bono Coordinators would also liaise with barristers and solicitors to fulfil the increasing number of pro bono referrals made by the Court's Judges and Registrars, as well as making arrangements for litigants in person requiring interpreters. These resources outside the Court can be harnessed more effectively with coordination that explains the nature of the case,

and where there are dedicated Court staff to provide bridges between the private profession, the Court, and the litigant in person.

64 The Federal Court has an impressive history in the use of mediation to resolve proceedings, and our Registrar led mediations have enjoyed well deserved reputations for decades. Nevertheless, the data demonstrates there is less chance of mediated resolution in a proceeding involving a litigant in person when compared to mediations with represented parties.

65 There are significant barriers for litigants in person in undertaking settlement negotiations with represented parties. The provision of legal assistance and advice to litigants in person in mediations, for the purposes of mediation only, would significantly improve the prospects of settlement and result in early diversion of more matters out of the Court system.

66 To facilitate this, the Court proposes to introduce a new flexible mediation model, in conjunction with the federal self-representation services in each Registry. Those services have already been consulted and are broadly supportive. The proposal would see the Court's Litigants in Person & Pro Bono Coordinators working with these self-representation services to arrange for lawyers to attend and assist litigants in person in mediations. These lawyers would be on retainers with event limited instructions, for the mediation only. The Court may also be able to work with the pro bono coordination projects of some of the Independent Bars across the country to facilitate engaging counsel for mediation purposes only. The recent Memorandum of Understanding between the Federal Court and the Victorian Bar is a good example of what might be possible.¹⁹

Filings Judge procedure

67 All litigants have a responsibility to be able to articulate their case in a clear and concise way. In an adversarial system, fairness to other parties depends upon them knowing the case they have to meet. It is difficult for the Court to deal with interlocutory applications if the case of one party is unclear. The Court is seeing a considerable increase in originating documents being lodged that fail to meet the basic requirements for a claim. Documents of that kind can be and are refused to be accepted for filing on the basis of a decision by a Registrar. However, Registrar refusals are generally confined to very obvious cases. Also, as previously mentioned, Registrar refusal often generates applications by litigants in person to review the refusal and

¹⁹ The Memorandum of Understanding established a 12-month pilot scheme for a formal referral pathway for pro bono and *amicus curiae* assistance. It was signed on 11 March 2026.

then further appeals. It is important for there to be systems to ensure that parties with valid claims which may not be well expressed are not rejected.

68 To deal with these issues, the Court is implementing a new Filings Judge Procedure. Currently, originating documents lodged by litigants in person are often referred to the Duty Registrar to consider whether they should be accepted for filing.

69 Under the new system, Judges will perform Filings Judge roles as part of the Court's duty system. The types of lodgements that will be referred to the Duty Registrar for consideration will be formalised. All lodgements by litigants in person who are repeat litigants will be referred to the Duty Registrar. Lodgements by other litigants in person may also be referred. The Duty Registrar will then consider whether to refer the lodgement to the Filings Judge based on the contents of the particular document.

70 The Filings Judge will then consider whether to order that leave must be obtained from a Judge before the document is accepted for filing. The litigant in person will then have an opportunity to file an affidavit explaining why leave should be given. A Judge will consider whether leave should be given.

71 This ensures that the proposed proceeding is reviewed by a Judge *before* it is commenced. It allows for scrutiny by a Judge to ensure that those claims with a proper basis are accepted and those which do not disclose any real basis are not accepted.

72 The procedures are designed to bring forward the involvement of a Judge to an early stage to save the time and cost of subsequent hearings that often tie up respondent parties unnecessarily. Where a Judge is persuaded that leave should be given then the claim will be able to be filed.

73 The application would then be provided to the Duty Registrar to check compliance with the Rules, before being provided to the rostered Judge for consideration. Should leave be refused to institute proceedings, no appeal will be permissible due to the operation of s 24(1AA)(a) of the *Federal Court of Australia Act 1976* (Cth).

74 The authority for this proposition is a case called *Praljak*.²⁰ Using the Court's appellate jurisdiction, our Judges can settle the procedural law through appeal. That is a function we

²⁰ *Praljak v Office of the Australian Information Commissioner* [2025] FCAFC 126.

should embrace. It will always be subject to supervision by the High Court on special leave or prerogative writ, but it provides guidance for all Federal Court Judges, Registrars and parties.

Litigant in person bench book

75 Another reform is that a new bench book to assist Judges in managing litigant in person matters in their docket is under development. Traditionally the Federal Court has not operated with the assistance of bench books, but that is changing.

Processes for people who litigate regularly

76 The Court has also put in place processes to keep better track of multiple proceedings issued by the same litigants, which under our docket system may end up before several different Judges and Registrars. The objective is to manage the entire cohort of a person's litigation more efficiently and effectively.

Firmer and clearer expectations during case management and trial

77 A principal vehicle through which we intend to make the Court's expectations clear and formal is the promulgation of a Practice Note in relation to litigants in person, which has recently been issued.²¹

78 Practice Notes are issued pursuant to the Court's inherent power to control its own process and to complement particular legislative provisions or rules of court. They set out procedures for particular types of proceedings and notify parties and their lawyers of particular matters which may require their attention. They do not override legislation, or the *Federal Court Rules 2011* (Cth), but provide a uniform standard by which proceedings can be managed, and the Court's expectations can be understood in advance.

79 Non-compliance with a Practice Note, where it is repeated, deliberate or vexatious, may form part of the reasons that a Court decides to exercise powers adversely to a party. This Practice Note is no different. Repeated, deliberate or vexatious non-compliance with the Litigants in Person Practice Note may have consequences for the proceeding of a litigant in person. It may also lead to costs consequences.

80 The Court's expectations and firmness will not only be directed towards litigants in person, but also towards the other parties and their legal representatives who engage with litigants in

²¹ 'Litigants in person (GPN-LIP), Federal Court of Australia, 5 March 2026: <https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-lip>.

person. While government parties and lawyers have well established and understood model litigant obligations, there are no such obligations on private parties and their lawyers.

81 Litigants in person may often commence proceedings against multiple parties. In the course of working out whether all persons joined should remain joined there are likely to be many interlocutory steps and skirmishes. An individual litigant in person trying to navigate this maze should be able to rely on other parties and their lawyers behaving fairly and reasonably, assisting where possible, not engaging in voluminous correspondence, and exercising restraint in making applications and the number and size of documents filed and relied on. The Court is not a battleground where only the fittest or most well resourced survive and prevail.

82 Ahead of the Practice Note, the Court undertook extensive internal and external consultations. Internally, consultations occurred with Judges and Registrars in each Registry. Externally, consultation was sought from community legal centres, the profession at large, other Courts, and from litigants in person themselves. Extremely helpful feedback was received from all sources.

83 The Practice Note addresses the initial decision whether an individual should act as a litigant in person in the Federal Court. It seeks to persuade litigants in person to consider this decision carefully, and to make them fully aware of all the avenues that might be available to them for legal advice and representation.

84 Next, it addresses the basics of what they will have to do if they decide to commence, defend or continue a proceeding as a litigant in person.

85 The Practice Note does not purport to be a manual or handbook about the conduct of a proceeding in the Federal Court. Its purpose is to provide some basic information, in one location, with cross references and links to other information. The Court intends that there will be other opportunities and mechanisms for litigants in person to receive advice and assistance about the preparation and conduct of their proceeding. I have described those above in the early intervention section. There are likely to be more sources of information available as the Litigants in Person and Pro Bono Project develops and we receive feedback from stakeholders such as self-representation services about what kind of information is likely to assist. Thus, the Practice Note should not be considered in isolation.

86 Third, the Practice Note seeks to reframe what happens during the conduct of a proceeding in a way that focusses not only on ‘rights’ but on responsibilities. This we consider to be a critical

aspect of the approach. It is the same approach taken in ss 37M and 37N of the *Federal Court of Australia Act 1976* (Cth). An understanding of one's responsibilities in the conduct of litigation is essential in contemporary courts. The administration of justice is not one sided, and it is not a one way street. Fairness does not flow only in one direction towards a litigant in person. Nor does it flow only in one direction towards other parties. Respect, restraint, proportionate behaviour both inside court and in communication with the court, apply to everyone. The Litigants in Person Practice Note reinforces these kinds of expectations.

87 Fourth, litigants in person commencing a proceeding will be asked to acknowledge they have sought to familiarise themselves with the Litigants in Person Practice Note. It is intended to be a foundational document for them. Judges dealing with litigants in person who have a proceeding already in the Federal Court prior to the issuing of the Practice Note will be able to direct all litigants to the Practice Note and use it as they consider appropriate in an already commenced proceeding. For a recent example after the publication of the Practice Note, see *Ogbonna v Link Workforce Pty Ltd (No 2)* [2026] FCA 298.

88 Fifth, the Practice Note will need to be kept under regular review. We will continue to consult about its effectiveness, strengths and weaknesses.

Tangible consequences for unreasonable conduct of proceedings

89 The Litigants in Person and Pro Bono Project has examined a number of strategies the Court can adopt, adapt or increase its use of, to make clear the tangible consequences for litigants in person who engage in objectively unreasonable conduct.

Vexatious litigant orders

90 Like other courts, the Federal Court has well established powers to deal with persons who meet the description of vexatious litigants.²² Over the last few years, and in the face of the challenges I have described in this presentation, Judges of the Court have turned to a consideration of the exercise of these powers more often.

91 The consequence of a person being declared a vexatious litigant is the need to seek leave before commencing a proceeding. A declaration thus does operate as a qualification on the ability to litigate. It is important to emphasize it is no more than a qualification. The purpose of the exercise of such a power is not to prevent an individual from ever litigating in a court again. It

²² *Federal Court of Australia Act 1976* (Cth) pt VAAA.

is to provide an additional layer of scrutiny, because of proven previous conduct, about the merits and reasonableness of the litigation being brought, and to preclude the re-litigation of issues and matters already decided.

92 That increase has tracked the increase in the number of litigants who pose disproportionate burdens on the resources of the Court and of the other parties in their proceedings, and who have a tangible effect on the wellbeing of Judges, Registrars and Court staff that any modern institution which takes its workplace safety and wellbeing obligations seriously cannot ignore. Relying on the well established powers available to them under the *Federal Court of Australia Act 1976 (Cth)*, more Full Courts have required litigants to show cause why they should not be subject to a vexatious litigant declaration.

93 To illustrate the burden of vexatious litigants by way of example, in 2024 a Full Court made a vexatious proceedings order against a litigant in person who had been involved in 26 separate matters in the seven years prior.²³

94 In some cases, the orders made are restricted to litigation against particular parties. In other cases, they are wider. When initiated at Full Court level, all parties, including the litigant who is subject to the show cause process, will have the benefit of three judicial perspectives on the question of whether they meet the statutory criteria to be declared vexatious.

Fees

95 Currently, a person is exempt from paying most filing fees in the Federal Court if they, most relevantly, hold a health care card, a pensioner concession card, a Commonwealth seniors health card, or any other card entitling the holder to Commonwealth health concessions.²⁴ Exemptions are also available for those receiving youth allowance or Austudy payments, among other groups.

96 Fee levels are set by government, not the Court. An individual who does not receive the benefit of a fee exemption generally pays,²⁵ for example, a fee of \$1,530 to file a commencing document.²⁶ A document applying for leave to appeal requires a fee of \$2,055.²⁷ The setting-

²³ *Storry v Parkyn (Vexatious Proceedings Order)* [2024] FCAFC 100.

²⁴ *Federal Court and Federal Circuit and Family Court Regulations 2022* div 2.3.

²⁵ *Federal Court and Federal Circuit and Family Court Regulations 2022* sch 1.

²⁶ *Federal Court and Federal Circuit and Family Court Regulations 2022* sch 1 item 101.

²⁷ *Federal Court and Federal Circuit and Family Court Regulations 2022* sch 1 item 106.

down fee for a hearing is \$3,055.²⁸ An appeal from a decision of the ART attracts a filing fee of \$5,145.²⁹ These fees are generally around twice as high for corporations. Thus, fee waivers and exemptions can deliver considerable benefits to litigants.

97 In case it is not well known, none of this revenue comes to the Court. It goes into consolidated revenue.

98 The purpose of fee exemptions and waivers is to ensure that practical ability to commence and continue a proceeding is fairly available across the Australian community. Their purpose is not to facilitate litigation that is unduly or unfairly repetitive or an abuse of process.

99 In the short term and as part of the Litigants in Person and Pro Bono Project, the Federal Court intends to review the fee exemption and fee waiver regime. Where the genuine purpose of exemption and waiver regimes is likely to be achieved; namely fair and proportionate access to the courts, the exemptions and waivers are likely to remain. Where that is not the case, if the Federal Court can make its own changes, it will consider doing so. If the Court needs to seek the support of the legislature or the executive to make those changes, it will consider doing so.

100 One possibility is the introduction of a small fee that is generally not able to be waived, following the practice adopted in some State courts. The Court is not contemplating imposing full fees on litigants in person, but we are considering whether, in appropriate circumstances, a modest and affordable fee should be payable.

Preparedness to use other powers

101 Generally speaking, the Federal Court has sufficient powers available to deal with unreasonable or unfair conduct of proceedings by litigants, whether they are represented or unrepresented.

102 Historically there may have been greater reticence applied in exercising some of these powers in relation to litigants in person. That is a consequence of judicial recognition of the systemic disadvantages that litigants in person can face, and their lack of specialised knowledge and experience.

²⁸ *Federal Court and Federal Circuit and Family Court Regulations 2022* sch 1 item 116.

²⁹ *Federal Court and Federal Circuit and Family Court Regulations 2022* sch 1 item 108.

103 As the levels of unacceptable, abusive and harmful behaviour rise, that reticence is unlikely to
continue.

104 Powers such as the power to stay a proceeding until the behaviour of a litigant in person returns
to levels of reasonableness and proportionality is an example.³⁰ Of course, this power may not
be as effective against respondent litigants in person, who may be quite content for a proceeding
against them to be delayed by a stay. In those circumstances, powers of summary judgment
against a litigant in person respondent for abuse of process may be available.

105 The point to be made here is that there are clear risks to workload, workplace safety and
wellbeing for Judges, Registrars and Court staff posed by an increasing cohort of litigants in
person whose behaviour is unreasonable and harassing. The responses to the survey I referred
to early reflect this, with 69% of Judges indicating that they or their Chambers staff
“sometimes” experience aggressive, abusive or threatening behaviour from litigants in person,
with only 24% indicating that this happens “rarely”.

106 One example of such behaviour, much of the brunt of which is borne by our registry staff, is
as follows.

107 Over the course of a decade, a particular litigant in person has commenced 13 proceedings in
the Federal Court, including a large number of appeals and interlocutory applications within
proceedings.

108 During this time, they have consistently engaged in frequent and consistent communication
with Registry staff and Chambers staff that is abusive, offensive and, in some instances,
threatening. This has occurred by email, over the phone and in person at the Registry counter.
They have repeatedly threatened to refer various Judges, Registrars and Court staff to the
National Anti-Corruption Commission, the Attorney General and the Prime Minister for
corruption, fraud and discrimination, and has made baseless complaints against numerous
Court staff. Some of the Court staff are junior, and young.

109 When attending the Registry in person, the litigant in person has shouted at Registry staff,
slammed their hands on the counter and repeatedly rung the Registry doorbell when Registry
staff have terminated the interactions. Their phone calls to Registry and Chambers have

³⁰ There are currently no reported cases in the Federal Court where this has occurred. However, for other methods
adopted to deal with challenging litigants in person, see *Ogbonna v Government of Western Australia* [2023]
FCA 1345; *Thomas v University of Melbourne (No 4)* [2019] FCA 1798.

sometimes exceeded 40 calls per day and have resulted in the phone system ‘crashing’, causing calls to drop out and requiring the phone system to be reset. They have also posted allegations against Court staff on social media.

110 Due to their behaviour, the litigant in person has been subject to at least six orders restricting their ability to file documents and communicate with the Court, as well as a limited vexatious litigant order preventing the litigant from filing proceedings against specified respondents. They have also been reported to the police, though the Court is not aware of any criminal action being taken.

111 There are other similar examples. In one case, a Registrar allocated to assist a Judge with a litigant in person was the subject of escalating threats to kill or maim a Registrar and their family. This understandably took a significant toll on the Registrar, who installed security equipment at their home and took steps to remove their address from the electoral roll. Ultimately, the litigant in person was declared vexatious, and criminal proceedings were commenced by the police.

112 Not all litigants in person fall into this cohort by any means, but the size of this cohort, the burdens they impose, and the extremities of their behaviour, are increasing. The Registrar referred to above estimates that, in respect of this litigant, they spent up to 150 hours on issues directly or indirectly related to the litigant in person.

113 Those litigants in person who are unwilling or unable to behave in respectful, reasonable and proportionate ways may experience consequences for the conduct of their proceedings. They may not be able to continue to access the Court unless and until their behaviour is at reasonable and respectful levels. It is important to be able to sanction poor behaviour when it happens, to prevent further escalation, and to maintain confidence in the respectful conduct of court processes.

PARTNERSHIPS TO MEASURE PROGRESS AND SUCCESS

114 As with any other initiatives that deal with the conduct of people in circumstances of tension, conflict and anxiety – which on any view litigation involves – it is critical to assess whether the measure is effective. In many ways, benchmarking and monitoring measures is new territory for the Court. Historically, we have simply assumed our justice services will be available and accessed by those who wish to, and we have focussed on the core tasks of allocating and disposing of proceedings. In the contemporary landscape, and especially if

courts are to seek additional funding from government by way of taxpayer monies, we must be responsible for measuring and monitoring the success or otherwise of initiatives we take.

115 That is not our core skill set. Therefore, we must find appropriate partners. The Court is engaging with members of the legal academy on some exciting potential research projects relating to the Litigants in Person and Pro Bono Project. I am not able to provide any further details at the moment, but I look forward to being able to do so in the short or medium term. There are real opportunities in this space. While the Court will always develop and control its own processes, there are real advantages to be gained by having the academy evaluate what we put into place, so we can improve and refine what we do.

116 The Federal Court is implementing more tailored and improved data collection and analysis systems for ongoing litigant in person data capture, including more automated data collection. For example, comparative data will be able to demonstrate the extent to which more litigants in person matters are being settled at mediation following the introduction of the proposed new assisted dispute resolution model.

117 Not all impacts can be measured quantitatively. The Federal Court proposes to engage in regular surveys of Judges, Registrars, Chambers and Court staff. Surveys are a useful means of gathering direct experiences. They also provide the opportunity for Judges, Registrars and Court staff to convey how dealing with challenging litigants in person affects them, in terms of their workplace safety, health and wellbeing. The Court is open to surveying litigants in person themselves, and the legal centres who assist them, to ensure we are measuring effects on all sides.

118 In the early years, the Court will undertake annual evaluations and reporting and regular consultations with external stakeholders. Initial consultations on litigants in person were recently undertaken by the Court with a range of key stakeholders, and these were productive and constructive. It is proposed that, as more measures are implemented, the Court undertake further consultations with various stakeholders, including the legal profession, peak legal bodies, community legal centres, and non-legal organisations that interact with litigants in person and the Court. These consultations would provide an important external perspective on the effect of new initiatives.

WHERE TO FROM HERE?

119 Currently, there is a statutory right in the *Judiciary Act 1903* (Cth) to appear in person. Section 78 of that Act provides that “[i]n every Court exercising federal jurisdiction the parties may appear personally or by such barristers or solicitors as by this Act or the laws and rules regulating the practice of those Courts respectively are permitted to appear therein”.

120 Section 78 is an original provision of the *Judiciary Act 1903* (Cth). It was part of the Act when it was enacted in 1903 and has never been substantively amended.³¹ Although the passage of the Bill involved a great deal of parliamentary debate, clause 78 was agreed to by both the House of Representatives and the Senate without discussion.³² A clause in the same terms was also part of an earlier iteration of the Bill that was introduced in 1901 but lapsed at the end of the first Commonwealth Parliament.³³

121 The apparently uncontroversial nature of s 78 may well reflect that, in the early history of the English courts all litigants were required to appear in person; the right to be represented by a lawyer came later.³⁴ For instance, in 1768, Blackstone wrote:

Formerly every suitor was obliged to appear in person, to prosecute or defend his suit, (according to the old Gothic constitution) unless by special license under the king’s letters-patent. This is still the law in criminal cases.³⁵

122 The right to be defended by counsel in all criminal proceedings was conferred in 1837 by the *Prisoners’ Counsel Act*.³⁶

³¹ A minor amendment was made in 1976, but this did not touch on the right to appear in person: see *Judiciary Amendment Act 1976* (Cth) s 16.

³² Commonwealth, *Parliamentary Debates*, House of Representatives, 30 June 1903, 1534; Commonwealth, *Parliamentary Debates*, Senate, 7 August 1903, 3250.

³³ Judiciary Bill 1902 (Cth) cl 70. At the time of writing, a copy of the Bill was accessible here: <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillshistorical%2FHBILL19010200037%22>.

³⁴ Sir Frederick Pollock and Frederic William Maitland, *The History of English Law Before the Time of Edward I* (Lawbook Exchange, 2nd ed, 1996) vol 1, 211; Bridgette Toy-Cronin, ‘Keeping Up Appearances: Accessing New Zealand’s Civil Courts as a Litigant in Person’ (PhD Thesis, University of Otago, 31 July 2015) 3. For an early example of an attempt to assist litigants in person in English courts, see Jacob Giles’ “Every Man His Own Lawyer”, which in its popular 1772 seventh edition, edited by Hugh Gaines, purported to teach “all Manner of Persons ... how to defend Themselves and their Estates and Fortunes ... In all Cases whatsoever” and contained, for example, fill-in-the-blank bail applications.

³⁵ William Blackstone, *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765-1769* (University of Chicago Press, 1979) vol 3, 25.

³⁶ William Holdsworth, *A History of English Law* (Sweet and Maxwell, 1972) vol 9, 235.

- 123 This history may also explain why s 78, as originally enacted, included a marginal note with the words “Appearance by barrister or solicitor”.³⁷
- 124 In any event, in 1994 the High Court described the right of a litigant to appear in person as “fundamental”.³⁸
- 125 Given the ability to represent oneself, the Court needs to be equipped in contemporary ways to accommodate people exercising these rights, and to be able to assist them appropriately. Equally, those who exercise their right to self-representation need to be aware of the responsibilities which come with access to a court and participation in a legal proceeding. The right to represent oneself should not be seen as unqualified. It should be seen as conditioned upon the need to act respectfully and reasonably, and to refrain from conduct that jeopardizes the safety and wellbeing of Judges, Registrars and court staff, and other participants in litigation.
- 126 There are many considerations to be balanced in dealing with litigants in person. In the face of the cost of the provision of legal services and no changes on the horizon to this barrier, Judges, Registrars and staff of the Court will continue to provide fair and reasonable opportunities to people to represent themselves.

³⁷ The note also referred to s 747 of the *Revised Statutes of the United States* (1878) (s 35 of the *Judiciary Act of 1789* (US)), which was in very similar terms to s 78.

³⁸ *Cachia v Hanes* (1994) 179 CLR 403 at 415 (Mason CJ, Brennan, Deane, Dawson and McHugh JJ).