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THE BURDEN OF SELF-REPRESENTED LITIGANTS: INSIGHTS FROM A SOUTH AUSTRALIAN EMPIRICAL ANALYSIS

'Your Honour, I don't know about all these laws, all I want is justice!'[1]

I Introduction

Self-represented litigants ('SRLs') have caught the attention of the courts in South Australia and elsewhere. There has been judicial, academic, and political commentary on SRLs, often describing them as problematic, placing undue strain on courts' resources, increasing costs for opposing parties and, in some cases, bringing vexatious and disruptive actions.[2] Concurrently, there has been a rise in academic and judicial commentary on 'tackling the challenge' that SRLs pose for the profession.[3] John Faulks, former Deputy Chief Justice of the Family Court of Australia, has observed that

> [t]here are three things … that can be done in relation to self-representation by litigants: one is to get them lawyers, the second is to make them lawyers and the *third is to change the system*.[4]

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1 A self-represented litigant, overheard in Court Room 7 of the Supreme Court of South Australia, (January 2025).

2 Duncan Webb, 'The Right Not to Have a Lawyer' (2007) 16(3) *Journal of Judicial Administration* 165, 166; Elizabeth Richardson and Tania Sourdin, 'Mind the Gap: Making Evidence-Based Decisions About Self-Represented Litigants' (2013) 22(4) *Journal of Judicial Administration* 191, 193–4. See generally Emma Garret, 'The Impact of Self-Represented Litigants on the Administration of Justice in the Federal Court of Australia' (2020) 9(1) *Journal of Civil Litigation and Practice* 34. Cf Tania Sourdin and Nerida Wallace, 'The Dilemmas Posed by Self-Represented Litigants: The Dark Side' (2014) 24(1) *Journal of Judicial Administration* 61, 64–5.

3 John Faulks, 'Self-Represented Litigants: Tackling the Challenge' (Conference Paper, Managing People in Court Conference, National Judicial College of Australia and the Australian National University, February 2013).

4 Ibid 2 [3] (emphasis added).

The limited empirical data available has encouraged proposed reforms to pour more resources into the existing system: more legal aid funding,[5] more plain English guides,[6] and the general simplification of court procedures.[7] Unfortunately, despite the current generation of reform reaching nearly 30 years of age,[8] concerns about the sustainability of support systems for vulnerable people remain high.[9] As the SRL persona continues to evolve and more data slowly becomes available,[10] deeper adjustments in our dispute resolution system may be required.

This comment seeks to make a novel contribution to the field through analysis of a first-of-its-kind dataset made available by the South Australian Courts Administration Authority ('CAA'). The dataset consists of a census of matters in the South Australian Superior Courts, namely the Supreme Court and Court of Appeal, with corresponding SRL attributes alongside other data characteristics.

Part II will discuss the existing commentary on issues relating to SRLs, including examining the types of SRLs that engage in judicial review and the perception of their 'burdensome' persona in the courts. Additionally, this Part will examine how the courts and the profession have addressed the 'burden' the SRL poses. Part III will analyse the CAA data, drawing quantitative conclusions, summarising key patterns in relation to the prevalence of SRLs across various snapshots of the Courts' workload, and providing broader discussion where appropriate. Part IV will conclude.

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5 See: Law Council of Australia, 'Government Funding Needed to Avert Legal Aid Crisis' (Media Release, 27 February 2025) ('Funding 2025'); Commonwealth of Australia, Attorney-General's Department, *National Access to Justice Partnership* (Intergovernmental Agreement, 1 July 2025).

6 See, e.g., Legal Services Commission South Australia, *Law Handbook* (online, 2025) <https://lsc.sa.gov.au/LawHandbook>. See also Supreme Court of Victoria, *Annual Report 2023–24* (Report, November 2024) 37.

7 The seminal report on the matter is Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (Report, No 89, 17 February 2000) ('*Managing Justice Report*'). This report sparked a series of consolidations and reforms to the civil procedure Acts and Rules in Australia. See generally, on the issue of simplification: ch 8. For criticism of simplified procedure, see particularly, feedback from lawyers suggesting increased costs resulting from early simplification efforts: at 21.

8 The key government publications include: ibid; Senate Standing Committee on Legal and Constitutional References, Parliament of Australia, *Inquiry into Legal Aid and Access to Justice* (Report, 8 June 2004) ('*Standing Committee Report*').

9 See, e.g., 'Funding 2025' (n 5).

10 See, e.g., McIntyre et al, 'A Quantitative Analysis of the Rise of Pseudolaw in South Australia' (2025) 46(2) *Adelaide Law Review* 439. Additionally, the prevalence of matters being brought by vexatious, sovereign-citizen-linked, applicants have been covered in media outlets: see e.g., 'Uncovering the Anti-Government Movement Brewing Across the Nation', *Four Corners* (Australian Broadcasting Corporation, 2025) ('*Four Corners Investigation*').

II The Self-Represented Litigant

A *Who Are SRLs?*

It is important to define the SRL. After all, the term 'self-represented litigant' refers to a broad class of persons.[11] The literature has observed that 'self-represented parties' may take the form of a criminal defendant at trial representing themselves, or an applicant before a tribunal.[12] However, this comment will primarily focus on the self-represented *litigant*: an unrepresented party in a civil proceeding.

It is important to clarify the *types* of SRLs that engage in civil actions. As Ben D'Andrea observes, there is no 'one-size fits-all description' of an SRL.[13] While r 25.6(2) of the *Uniform Civil Rules 2020* (SA) ('*UCR*') does not 'prevent an individual from acting … self-represented',[14] it is obviously counterintuitive that someone with no legal experience or training would elect to appear unrepresented given the complexity of civil litigation generally. Justice Kyrou (writing extracurially) has observed that the courts encounter two types of SRLs: (1) querulent SRLs, who could be described as persistent complainers obsessed 'by the legal process' and the pursuit of their definition of 'justice';[15] and (2) non-querulant SRLs, who may have a cogent, rational or meritorious case though appear without legal representation.[16] These non-querulent SRLs may be unrepresented for numerous reasons, including:

(1) an inability to afford the costs associated with legal representation;[17]
(2) no practitioner may be willing to act on their claim, possibly on the basis that it is weak or meritless;[18] or
(3) they are unable to access adequate funding through legal aid programs.[19]

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11 Harlis Kirimof and Erik Dober, 'Known Unknowns: The Overarching Obligations of Self-Represented Parties' (2015) 25(1) *Journal of Judicial Administration* 28, 30.

12 See, e.g., ibid.

13 Ben D'Andrea, 'Defeated "on the Battleground of Procedure": South Australia's Universal Pleading Rules and Access to Justice for Self-Represented Litigants' (2021) 43(3) *Bulletin (Law Society of South Australia)* 32, 33.

14 *Uniform Civil Rules 2020* (SA) r 25.6(2) ('*UCR*').

15 Emilios Kyrou, 'Managing Litigants in Person' (2013) 25(2) *Judicial Officers' Bulletin* 11, 11–12; Australian Institute of Judicial Administration, *Forum on Self-Represented Litigants* (Report, 17 September 2004) ('*SRL Forum*') 2–3. See also: D'Andrea (n 13) 35, citing *Australian Law Dictionary* (3rd ed, 2018) 'querulant'. See also McIntyre et al (n 10).

16 Kyrou (n 15) 11. See also D'Andrea (n 13) 35.

17 Productivity Commission, 'Access to Justice Arrangements' (Report, No 72, 5 September 2014) vol 1, 492 ('*Productivity Commission Report*').

18 Ibid 494. See *South Australian Legal Practitioners Conduct Rules 2022* (SA) ('*SALPCR*'), which states that practitioners 'must not act as [a] mere mouthpiece' for clients, elevating the duty not to bring unmeritorious claims to a professional obligation: r 17.1.

19 *Productivity Commission Report* (n 17) 491–2.

In parallel, the querulent SRL has attracted attention in the form of 'sovereign citizens' who argue 'pseudolaw' and are associated with anti-establishment ideology.[20] In *McConnell v Albanese*,[21] for example, an SRL applicant sought to advance several causes of action against the Prime Minister of Australia, Anthony Albanese. The applicant argued causes of action including negligence resulting in harm and breach of provisions of the *Criminal Law Consolidation Act 1935* (SA).[22] President Livesey rejected the applicant's notice and grounds of appeal on the basis they were 'nonsensical'.[23] This phenomenon has crossed into popular discourse, receiving media attention such as the Australian Broadcasting Corporation's *Four Corners* investigation into the sovereign citizen movement, which covered fringe groups who use 'pseudolaw' to target what they view as oppressive institutions.[24]

B *The SRL 'Burden'*

As a social phenomenon that is not contained to the courts, there are several fundamentally different lenses to approach the issue of SRLs. The authors wish to acknowledge the significant inquiries that have been undertaken on this topic from the perspective of SRLs — focussing on the negative effects of the justice system on SRLs, the nature of the legal needs left unmet by the present system, and the difficulties faced by lay persons navigating an appreciably complex system.[25] However, addressing the vulnerabilities of SRLs is only one aspect of promoting access to justice.

The High Court of Australia has long observed, as it did in *Cachia v Hanes*,[26] that litigants have the right to appear in person — describing this right as 'fundamental'.[27] However, the Court went on to say that an increasing number of SRLs were 'creating a problem for the courts'.[28] Thus, while acknowledging the peculiar challenges faced by SRLs, this comment will speak to the issue of administering the justice system. As the majority went on to explain:

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20 See, for the full-scope initial report, Joe McIntyre et al, *The Rise of Pseudolaw in South Australia: An Empirical Analysis of the Emergence and Impact of Pseudolaw on South Australia's Courts* (Report, 30 September 2024) ('*McIntyre Report*').

21 [2024] SASCA 131.

22 Ibid [1]–[4] (Livesey P).

23 Ibid [2].

24 See: *Four Corners Investigation* (n 10); Mahmood Fazel, Amy Donaldson and Dylan Welch, 'Inside the Fringe Groups Fighting a "Quasi Civil War' with Self-Styled Sheriffs and Their Own Court", *Australian Broadcasting Corporation* (online, 18 August 2025) <https://www.abc.net.au/news/2025-08-18/sovereign-citizen-movement-law-court-four corners/105655100>.

25 *Productivity Commission Report* (n 17) 494–5. For a Canadian perspective of the 'vulnerable' SRL, see Farrow et al, *Addressing the Needs of Self-represented Litigants in the Canadian Justice System* (Report, 27 March 2012) 14–16.

26 (1994) 179 CLR 403.

27 Ibid 415 (Mason CJ, Brennan, Deane, Dawson and McHugh JJ).

28 Ibid.

> All too frequently, the *burden* of ensuring that the necessary work of a litigant in person is done falls on the court administration or the court itself. Even so, litigation involving a litigant in person is usually *less efficiently conducted and tends to be prolonged*. The costs of legal representation for the opposing litigant are increased and the drain upon court resources is considerable.[29]

Declining efficiency in the justice system is an issue that affects everyone — SRLs and represented parties alike.[30] Thus, the issue of the burden, for the purposes of this comment, must refer to the effect of SRLs on the resources required to sustain courts. Attempting to identify exactly where that burden lies within the system, it has anecdotally been observed that matters with an SRL party are affected by: (1) the SRL having difficulty understanding and complying with procedural requirements under the *UCR* or directions of the court;[31] (2) hearings taking more time due to the judge having to explain processes and procedures to the SRL;[32] or (3) the SRL having difficulty articulating their case in a cogent way.[33]

Without a comprehensive framework to respond to SRLs, the obligation of assisting the SRL has fallen on: (1) the South Australian courts themselves; or (2) the opposing party.

1 *The Court's Increased Role*

Judges have a duty to ensure that proceedings involving an SRL are fair. While judges generally play a passive role in regular proceedings, when dealing with an SRL, they have a more active role in ensuring a fair trial.[34] Usually, the court relies on counsel to prepare the necessary pleadings and draft submissions.[35] However, the common law has recognised that the duty of ensuring a fair trial may extend to intervening or providing assistance to SRLs in proceedings.[36] The Full Court of the South Australian Supreme Court has characterised this obligation in the following terms:

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29 Ibid (emphasis added).

30 See, e.g., *Managing Justice Report* (n 7) 80 [1.59], citing Murray Gleeson, 'The State of the Judicature' (Speech, Australian Legal Convention, 10 October 1999).

31 Kirimof and Dober (n 11) 30, citing *SRL Forum* (n 15) 2. See also *Productivity Commission Report* (n 17) 487.

32 Kirimof and Dober (n 11) 30, citing *SRL Forum* (n 15) 2.

33 Ibid. See also Webb (n 2) 165–6.

34 *Kenny v Ritter* [2009] SASC 139. Justices Gray and Layton provide a comprehensive commentary regarding the authorities and principles surrounding SRLs: at [23]. See also Kirimof and Dober (n 11) 31.

35 Faulks (n 3) 3 [6]. See also *Cachia v Hanes* (n 26) where the Court observed that '[i]t would be mere pretence to regard the work done by most litigants in person in the preparation and conduct of their cases as the equivalent of work done by qualified legal representatives': at 415.

36 See *Kenny v Ritter* (n 34) [23]. See also Kirimof and Dober (n 11) 31–5.

> The duty of the judge is not to advise the unrepresented party how to conduct that party's case but to ensure that the party is fully aware of the legal position in relation to the procedural and substantive aspects of the case, thereby putting the party in a position to make effective choices.[37]

The Court went on to observe that this duty does not extend to '[stepping] into the shoes' of an SRL to perform critical roles, such as preparing examination of witnesses or preparing submissions.[38] But without adequate legal advice or knowledge, how can an SRL make 'effective choices'?

In *Badcock v Channel Seven Adelaide Pty Ltd*,[39] the pleadings prepared by the applicant (an SRL) were 'seiv[ed] through … for the purpose of leaving intact … paragraphs … disclos[ing] a cause of action'.[40] Therefore, this duty allows the court to exercise a degree of flexibility when overseeing proceedings. In other words, a judge is allowed to read between the lines, as it were, when considering submissions or pleadings. This ensures that an SRL does not immediately lose 'on the battleground of procedure'.[41] However, there is the risk that the court may go too far when exercising their duty.

For instance, in *Kenny v Ritter*,[42] the Full Court of the Supreme Court of South Australia found the trial judge was excessive in her assistance to the SRL. The trial judge undertook a substantial part of the examination-in-chief of the SRL's own witness. The extent of the trial judge's assistance was so extensive, that of the 63 pages of the transcript for the examination-in-chief, the trial judge's examination occupied some 59 pages.[43] Further, the Court observed that the trial judge 'largely conducted the cross examination' of several witnesses.[44] The Court ultimately held that 'the extent of questioning by the Judge indicated that she had stepped into the shoes of counsel for the plaintiff and was in fact conducting his case for him'.[45]

When examining these cases, a tenuous balance materialises when the court is confronted with an SRL. As the court must remain impartial — and for that matter, must preserve the appearance of impartiality — if a judge were to provide assistance or advise the SRL during proceedings, this may appear as acting favourably towards

37 *Kenny v Ritter* (n 34) [18] (Gray and Layton JJ).

38 Ibid [37].

39 [2005] SADC 32 ('*Badcock (No 1)*').

40 Ibid [36] (Lee J).

41 Ibid [37]. See also D'Andrea (n 13) 33.

42 *Kenny v Ritter* (n 34).

43 Ibid [33].

44 Ibid [36].

45 Ibid [37].

the SRL and 'adversely to the litigant who is represented'.[46] The court is left with two options: (1) open a ground of appeal through assisting the SRL due to the appearance of partiality; or (2) allow the SRL to suffer a irremediable disadvantage and potentially extinguish a legitimate cause of action. This balance has been described as 'something of a dilemma' by the Full Court of the Federal Court of Australia,[47] whereby a judge

> may be bound to provide some advice and assistance to an unrepresented litigant, [but] the authorities make it clear that the Judge should not intervene to such an extent that he or she cannot maintain a position of neutrality in the litigation. … However, the boundaries of legitimate intervention are flexible and will be influenced by the need for intervention to ensure a fair and just trial.[48]

The degree of assistance that a judge may provide an SRL will vary depending on the 'particular litigant', 'the nature of the case',[49] 'and the course of the hearing'.[50] Harlis Kirimof and Erik Dober observe, anecdotally, that when dealing with the 'unstructured fashion' of arguments made by SRLs, judges are left to make out causes of actions in incompliant pleadings or identify cogent arguments in pleadings.[51] It is from this additional responsibility that the duty of assisting SRLs has been described as a 'time-consuming duty'[52] — with claims that SRL-brought proceedings take up to 'five times as long'.[53]

However, what these commentaries lack is consistent identification of 'where' the extra time-burden arises. Is it through regular hearings taking a longer duration? Is it through judges devoting additional time in chambers? Or is it an increased number of hearings generally? This comment speaks directly to the last question, suggesting that, in fact, SRL matters require less hearings to resolve than non-SRL matters. If not in the number of hearings, this finding adds further cause to identify the true source of the burden.

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46 Ibid [19], citing *Hunter v Webb* (unreported, Federal Court of Australia, 19 July 1996). See also Paul Sigar, 'Unrepresented Litigants in South Australia: A Successful Pre-Trial Framework?' (2021) 43(2) *Bulletin (Law Society of South Australia)* 24.

47 *Minogue v Human Rights and Equal Opportunity Commission* (1999) 84 FCR 438, 446 [29] (Sackville, North and Kenny JJ).

48 Ibid.

49 *Tomasevic v Travaglini* [2007] VSC 337, [141] (Bell J).

50 *Downes v Maxwell Richard Rhys Pty Ltd* [2014] VSCA 193, [27] (Osborn JA).

51 Kirimof and Dober (n 11) 30.

52 Ibid 31. See also *Badcock (No 1)* (n 39) where Lee J observed that it would have been appropriate just to 'sieve' the applicant's second statement of claim for the purpose of 'leaving intact' a cogent cause of action: at [36].

53 Kirimof and Dober (n 11) 28, citing Liz Richardson and Liz Porter, 'Self-Representation Piling Pressure on Justice System', *The Age* (online, 16 April 2014) 18.

2 *Duties on Practitioners*

The responsibility to assist the SRL has, in some circumstances, been passed onto the representatives of opposing parties.[54] In *Kenny v Ritter*, Gray and Layton JJ observed that when proceedings involve an SRL, opposing counsel should ensure necessary topics are raised and should avoid pedantic objections.[55] Evidently, in a civil jurisdiction based on adversarial principles, placing expectations and responsibilities on opposing counsel seems incompatible with their main role: an advocate for their client, and an adversary to the SRL.

The *South Australian Legal Practitioners Conduct Rules 2022* (SA) ('*SALPCR*') are silent on how practitioners should treat SRLs.[56] While many other interstate jurisdictions have published practice notes on how to interact with SRLs in proceedings, neither the Law Society of South Australia nor the courts have formally commented on this increasing class of litigant in this way.[57] The profession, therefore, rightly may be confused as to how to approach matters involving SRLs. Without clarification, the authors share the concern expressed in the literature examined above that civil litigation may be prone to abusive or over-litigious processes: where legally trained and skilled parties use procedural mechanisms to defeat incompliant pleadings or submissions in an effort to avoid liability for otherwise meritorious claims and cogent causes of action.

3 *Looking Forward: A Need for Empirical Analysis.*

It is clear that there is growing concern from members of the profession that SRLs are causing a widespread burden.[58] Judges see this as taking up their time in session and in chambers,[59] prompting calls for increased judicial capacity to deal with the increased workload. Additionally, there is concern that the cost burden of judicial intervention falls not on SRLs but opposing parties.[60] All this occurs against the backdrop of concerns from non-governmental organisations and the public about

54 Garrett (n 2) 38–9; Sourdin and Wallace (n 2) 66.

55 See: *Kenny v Ritter* (n 34) [26]; D'Andrea (n 13) 34.

56 See, e.g., *SALPCR* (n 18) r 22.

57 See, e.g.: County Court Victoria, *Self-Represented Litigant* (Practice Note, 1 July 2020); The Law Society of New South Wales, *Guidelines for Dealing with Self-Represented Parties in Civil Proceedings* (Practice Note, December 2016); Queensland Law Society, *Self-Represented Litigants: Guidelines for Solicitors* (Practice Support, November 2017).

58 Faulks (n 3) 3–4; Garret (n 2) 38–40.

59 Garret (n 2) 38; Kirimof and Dober (n 11) 30.

60 Garret (n 2) 42; Elizabeth Richardson, Genevieve Grant and Janina Boughey, Australasian Institute of Judicial Administration, *The Impacts of Self-Represented Litigants on Civil and Administrative Justice: Environmental Scan of Research, Policy and Practice* (Report, 2018) 42 ('*2018 Study*').

the legal system's failure to accommodate the inability of SRLs to argue a cogent cause of action.[61]

Given the sheer breadth currently ascribed to the 'burden', funding to compensate every harm is not feasible. Yet, persistent commentary suggests that the issue is not manufactured. Therefore, the task ahead is one of pragmatic policymaking — a task that must ask questions before suggesting answers. To judges, where precisely in a matter's workflow do SRLs require more time, and are these burdens administrative or do they require judicial attention? To practitioners, in what contexts do they encounter SRLs and do some contexts work better than others? And to the public, what categories of unresolved legal problems represent the greatest instances of unfairness? All of these questions contribute to the proper fulfillment of the role of policymakers, but to know exactly what questions to ask and of whom, it is necessary to have a quantitative foundation to avoid pursuing popular myths and to accelerate the identification of areas needing acute attention. It is providing this data-informed foundation that the next Part of this comment is devoted to.

III SRLs In The South Australian Superior Courts: CAA Data

South Australia, like Australia generally, continues to lack detailed data about SRLs.[62] Even drawing from Australia's common law counterparts, much of the empirical research that has been undertaken focusses on jurisdictions where there are uniquely elevated rates of self-representation, such as family law.[63] And where

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61 See, e.g.: *Productivity Commission Report* (n 17) 506–23; D'Andrea (n 13); LawRight, 'Self-Represented Litigants in the Australian Civil Justice System 10 Years of the Self Representation Service in Australia' (Conference Paper, National Access to Justice and Pro Bono Conference, 23 March 2017) 12 [53]–[57]; Law Council of Australia, *Addressing the Legal Needs of the Missing Middle* (Paper, November 2021).

62 A series of early works, some exceeding a decade in age, form the regularly cited quantitative authorities for analysis in this area. A pioneering 2012 study identified information gathered by tribunals and Commonwealth courts with respect to SRLs: Elizabeth Richardson, Tania Sourdin and Nerida Wallace, *Self-Represented Litigants: Gathering Useful Information* (Final Report, June 2012) ('*2012 Study*'). That data served as the bedrock for further analysis on the actual impact and prevalence of SRLs in the courts. A 2018 report assessed the impact of SRLs on various dispute-resolution institutions: *2018 Study* (n 60). Concurrent to these developments, there were two significant government publications: *Standing Committee Report* (n 8); *Productivity Commission Report* (n 17). Besides these major reports, further quantitative data has been sparse.

63 See, e.g.: in the UK: Richard Moorhead and Mark Sefton, *Litigants in Person: Unrepresented Litigants in First Instance Proceedings* (Report, Department for Constitutional Affairs, March 2020); Liz Trinder et al, *Litigants In Person in Private Family Law Cases* (Report, Ministry of Justice, November 2014); in Canada: Rachel Birnbaum, Nicholas Bala and Lorne Bertrand 'The Rise of Self-Representation in Canada's Family Courts: The Complex Picture Revealed in Surveys of Judges, Lawyers and Litigants' (2013) 91(1) *Canadian Bar Review* 67; in the USA: John Greacen, 'Self-Represented Litigants, the Courts, and the Legal Profession: Myths and Realities' (2014) 52(4) *Family Court Review* 662.

pockets of general data have been extracted and analysed, the frequency with which each jurisdiction is examined makes it difficult to maintain a current picture of evolving needs.[64] This has resulted in academic and professional discussion having a tendency to characterise SRLs as a monolithic category.[65] Yet, without effective discrimination within the broader SRL category, it is challenging to develop targeted policy solutions in the context of ever-present funding constraints.

The CAA's new courts management system collects a significant range of data as part of its regular reporting capability. Critically, it links a range of data to specific matters, allowing some analysis connecting: (1) SRL status; (2) matter type (e.g., judicial review, contract dispute); (3) matter duration; (4) hearing instances; and (5) mode of outcome (e.g., judgment delivered, dismissed). This Part will present and analyse a dataset obtained from the CAA in January 2025 outlining the prevalence of SRLs in the South Australian Superior Courts.

A *Dataset Scope and Exclusions*

The dataset comprises all civil matters commenced in the South Australian Supreme Court and Court of Appeal in the 2022 and 2023 calendar years. The dataset is a completely deidentified census of that period.

The dataset intentionally excluded matters commenced subsequent to 2023. This allowed analysis to focus on matters which have progressed substantially through the litigation process, or in fact concluded. This avoids capturing recently commenced matters that are still, by necessity, in the pre-trial stage. This selection permits rational conclusions to be drawn from the full life cycle of the matter.

The dataset was intentionally limited to civil matters to reflect the special concerns in relation to SRLs in the civil jurisdiction discussed above.[66]

1 *Technical Characteristics*

The dataset identified each matter with the following labels:

64 See e.g., a generalist study in the USA: Paula Hannaford-Agor and Nicole Mott, 'Research on Self-Represented Litigation: Preliminary Results and Methodological Considerations' (2003) 24(2) *Justice System Journal* 163.

65 *SRL Forum* (n 15), cited by Richardson and Sourdin (n 2) 193. See also Sourdin and Wallace (n 2) 64.

66 See the discussion in Part II.

Table 1: Relevant Dataset Identifiers

Description	Identifier Label	Data Type
Court in which the matter was commenced	CaseCourtLabel	Categorical, Nominal
Civil or criminal	CaseTypeLabel	Categorical, Nominal
Whether a matter was in the court's regular or appellate jurisdiction	CaseAppealCategory	Categorical, Nominal
High-level matter type (i.e., what cause of action) classification	CaseCategory1Label	Categorical, Nominal
Specific matter type classification	CaseCategory2Label	Categorical, Nominal
Date on which the claim/originating application was lodged	LodgeDate	Numerical, Discrete
Date on which the final matter event occurred	FinalEventDate	Numerical, Discrete
Total duration of the matter[67]	DaysToFinal	Numerical, Discrete
The manner in which a matter resolved	FinalEventCodeLabel	Categorical, Nominal
Whether the applicant is an SRL	ApplicantSelfRepFlag	Categorical, Ordinal
Whether the respondent is an SRL	RespondentSelfRepFlag	Categorical, Ordinal

In addition, the dataset identifies the number of instances for various hearing types (being numerical, discrete data). The hearing types are categorised as follows: (1) directions; (2) argument; (3) in chambers; (4) mediation/settlement; (5) Court of Appeal hearing; (6) trial; (7) judgment; (8) possession hearing; (9) costs hearing; (10) enforcement hearing; and (11) other.

The nominal categories for the identifiers described in Table 1 above are as follows:

Table 2: Categorical Data Nominal Categories

Identifier Label	Categories (delineated by //)
CaseCourtLabel	District Court // Supreme Court
CaseTypeLabel	Civil // Criminal
CaseAppealCategory	Non-Appeal // Single Judge // Court of Appeal
CaseCategory1Label	(distinct matter categories, including 'Other' and '(blank)')
CaseCategory2Label	(distinct sub-categories, including 'Other' and '(blank)')
FinalEventCodeLabel	(distinct categories, including '(blank)' and '*Undefined' for matters that have not yet concluded[68])
ApplicantSelfRepFlag	1 (meaning the applicant *is* flagged as an SRL) // 0 (vice versa)
RespondentSelfRepFlag	1 (meaning the respondent *is* flagged as an SRL // 0 (vice versa)

67 Assumed to be a secondary identifier calculated based on *FinalEventDate* and *LodgeDate*.

68 I.e., *DaysToFinal* = 'NULL'.

Two further identifiers, being unique item codes for the above-described items, are duplicates for the purpose of this analysis and are merely a feature of the CAA's systems.

Notably, the dataset does not record who 'won' a particular matter upon conclusion — this point, in any case, can be highly ambiguous given that a claim may succeed only in part, a matter may be withdrawn, or parties may settle. Issues with properly assessing matter outcome in this sense have been the subject of some discussion.[69] These are made more complex by the difficulties in linking SRL status, in amongst the myriad of factors at play in litigation, as *causes* of success or failure.

2 *Faulty SLR Respondent Flag*

Prima facie, the data calls into serious question the accuracy of the SRL respondent flag. The dataset suggests that an extraordinary 79% of all respondents are self-represented.[70] This should not be accepted based on recent interview studies and anecdotal observations of the Courts' operation.[71] A potential reason for this is that while an originating application lodged by a represented party will be immediately noted in court management software as such, at the time a matter is created, legal representatives for the respondent are less likely to be identified. While there is no actual visibility of this fact, the natural conduct of matters suggests that an application would only note a respondent's legal representative on initiation if there was pre-existing communication between applicants and respondents with representation for prospective litigation confirmed as the relevant addressee for service *prior to the commencement of the matter* with respect to a particular matter.

An error at matter initiation is unlikely to be rectified in the ordinary course of a matter, other than through an internal procedure designed to ensure the continued accuracy of the SRL flag. Whether such a policy exists should be investigated with the CAA. This limitation is similar to that identified by Elizabeth Richardson, Tania Sourdin and Nerida Wallace with respect to the Federal Court's SRL flag system.[72]

Notwithstanding, the manner in which the SRL flag is created suggests an SRL applicant flag is inherently likely to be correct, even if the subsequent SRL status may not be properly tracked. Therefore, this analysis will focus exclusively on SRL applicants.[73] Any mention of SRL-related data hereafter refers exclusively to SRL-applicant matters.

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69 See, e.g., *2018 Study* (n 60) 49, citing Bridgette Toy-Cronin, *Keeping Up Appearances: Accessing New Zealand's Civil Courts as a Litigant in Person* (PhD Thesis, University of Otago, New Zealand, 31 July 2015) 30.

70 79% (1665 of 2102).

71 See, e.g., McIntyre Report (n 20).

72 *2012 Study* (n 62) 21–3.

73 For instance, the *RespondantSelfRepFlag* is excluded from analysis.

While the identification of concerns with the SRL respondent flag in this dataset is unique, narrowing reporting and analysis to matters brought by SRLs (as opposed to merely matters *with* an SRL party) is not novel.[74]

3 *Exclusion of Procedural Matters*

A further scoping consideration is the fact that a large number of Supreme Court matters are procedural in nature.[75] In these matters, the Court undertakes an often-straightforward fact-finding exercise to make a decision on a frequently occurring subject matter. For example, applications for possession are listed in bulk and can be resolved in a matter of minutes — non-appearance can result in immediate judgment given proof of service,[76] and otherwise, the matter often concerns a simple default of a mortgagor.[77] Additionally, there are matters secondary to others which resolve the substantive dispute — namely interpleader applications and applications for pre-action discovery. To emphasise the effect these procedural matters have on the dataset, just two types of these procedural matters account for nearly half of the 'matters' dealt with by the Supreme Court.[78] Taken together, these procedural matters are not representative of the substantive work of the Supreme Court and are excluded from analysis.

B *General Features*

In the 2022–23 calendar years, 2,102 matters were commenced in the Supreme Court. Of these matters, 10% (n=211) remained active as of January 2025.

Excluding procedural applications, the Supreme Court dealt with a total of 1,127 matters. In this sample, 15.5% (n=175) were brought by SRLs. While this figure could be used as a general assessment of the prevalence of SRLs in the Supreme Court, a further distinction may be beneficial.

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74 See, e.g., *Productivity Commission Report* (n 17) which isolates family law and Federal Court matters brought by SRL applicants. The *2012 Study* (n 62) identifies that the Federal Court did not record respondent SRL status at the time, suggesting a general limitation that may have shaped methodologies on the subject of SRLs: at 68. Additionally, the Queensland Supreme Court extracts data related to the success of SRL litigants — necessarily focusing on SRL applicants as opposed to SRL respondents: Supreme Court of Queensland, *Annual Report 2023 –24* (Report, 31 October 2024) 22 ('*QSC Annual Report 2023–24*').

75 For the purpose of this comment, the following 'procedural' matters are excluded: (1) applications for possession; (2) interpleader applications; (3) applications for taxation of costs; (4) appointments of senior counsel; (5) applications for pre-action discovery; (6) issuance of subpoena; and (7) applications for cross-vesting.

76 *Real Property Act 1886* (SA) s 194.

77 Ibid ss 192(b), 195.

78 These being interpleader applications and applications for possession.

There were 967 non-appeal matters;[79] 98 of these had an applicant SRL flagged. This means that approximately 10% of matters in the Supreme Court's original jurisdiction were brought by an SRL. This figure — 10% SRL prevalence — ought to be treated as a baseline SRL prevalence figure in the Supreme Court.

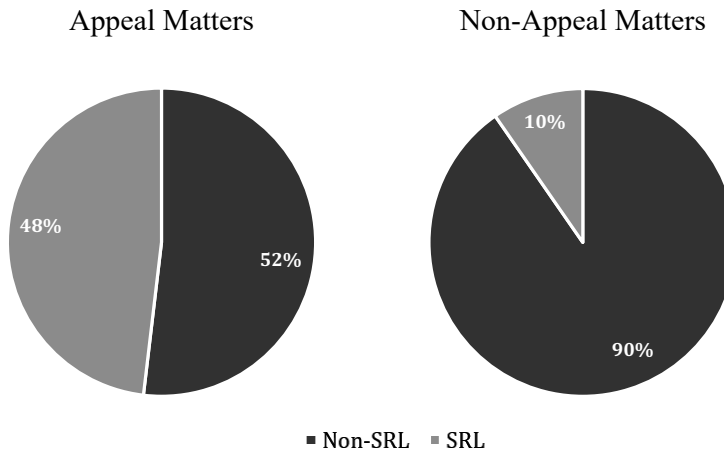
There is no comparison dataset in Australia that captures all matters in a state superior court. This view is endorsed by Richardson et al as at 2018.[80]

By way of a loose comparison, in 2003–04, approximately 32% of all matters in the Federal Court of Australia had at least one party that was an SRL.[81] Though, it was noted that the high prevalence in the Federal Court was attributed to the migration division, where most applicants were SRLs.[82]

C *Civil Appeals*

The Supreme Court dealt with 160 civil appeal matters.[83] Of the 160 matters, 77 had an applicant SRL flagged — being 48%.

Figure 1: Comparison of SRL Proportion in Appeal and Non-Appeal Matters



The primary observation from this comparison is the considerably higher prevalence of SRLs in appeal matters compared to non-appeal matters.

79 Post-exclusion. See (n 75)

80 *2018 Study* (n 60) 29–30.

81 *Productivity Commission Report* (n 17) Appendix F: Data on Self-Represented Litigants, Figure F.3.

82 Ibid 997–8. See also ibid Figure F.2.

83 Including both 'Court of Appeal' and 'Single Judge' matters per the *CaseAppeal Category* identifier.

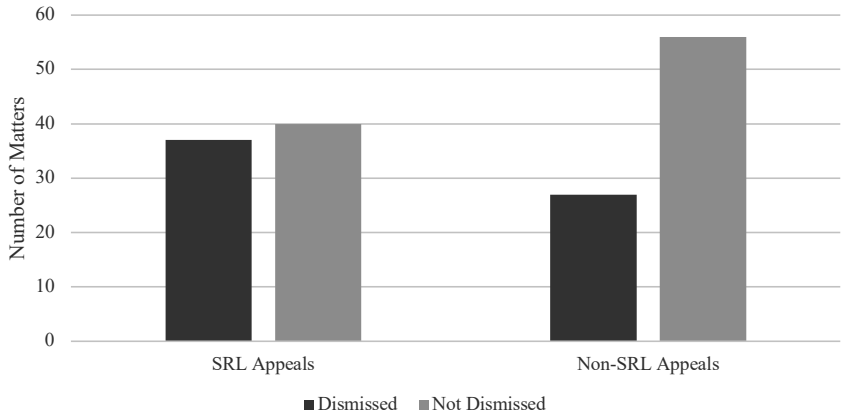
By way of comparison, in the 2023–24 financial year, of the civil matters finalised by the Queensland Court of Appeal — the only state superior court to publish SRL statistics in its annual report — 39% of matters had at least one SRL party.[84] Additionally, while an aged dataset, in 2013, approximately 22% of matters commenced in the Supreme Court of Victoria civil appeal jurisdiction were commenced by SRLs.[85]

While South Australia thus appears to have a comparatively high rate of SRLs in its Supreme Court civil appeals jurisdiction, this should not be interpreted as evidence of a unique set of conditions. The comparison rests on an aged Victorian dataset (which had a substantial upward trend from 2001–13) and a single current comparative dataset. Therefore, the prevalence observed in the South Australian courts is more likely a general trend nationally. Further empirical study would enable a cohesive picture to develop.

D *Appeal Dismissals*

There has been particular concern about the use of strike-out and dismissal procedures to discriminate against SRLs.[86] Thus, the following will briefly extract data on the resolution of matters by dismissal.

Figure 2: Supreme Court Appeals Distinguished by SRL Status



84 *QSC Annual Report 2023–24* (n 74) Appendix 1, Table 3 and 12.

85 *Productivity Commission Report* (n 17) Appendix F: Data on Self-Represented Litigants 1003, Figure F.10.

86 For a focussed, Canadian analysis of the subject, see Julie Macfarlane, Katrina Trask and Erin Chesney, *The Use of Summary Judgment Procedures Against Self-Represented Litigants: Efficient Case Management or Denial of Access to Justice?* (Report, National Self-Represented Litigants Project (Canada), November 2015). See also, in Australia: D'Andrea (n 13).

The data shows a significant relationship between SRL status and the chance of dismissal (χ^2 (1, n = 160) = 6.19, p = 0.13, α = 0.1). The general hypothesis that SRL appeals are more likely to be dismissed is supported.

Appeals brought by SRLs have a dismissal rate of 48%, while those not brought by SRLs have a dismissal rate of 33%. Thus, this dataset suggests appeals brought by SRLs are 45% more likely to be dismissed.

There is a perception that the appellate jurisdiction is particularly complex and thus inaccessible to SRLs who are likely not to have the technical skills to prepare legally sound grounds of appeal.[87] Additionally, there is a view that querulant SRLs are responsible for a glut of unmeritorious appeals.[88] Both of these hypotheses could explain an elevated dismissal rate for SRL appellants. The analysis presented here does not allow for causality to be determined, so while the data reveals that there is a higher rate of dismissal for appeals brought by SRLs, it is not possible to identify what accounts for this.

Whether this higher dismissal rate for SRL appellants is of concern depends on which of these features accounts for the higher dismissal rate. If it is caused by the inability of SRLs to effectively present their case, this would be concerning; if it simply reflects the taking of unmeritorious appeals, this would be appropriate. What does stand out from this data is that appeals brought by SRLs are much less likely to succeed, albeit that we cannot be certain as to the reasons for this.

E *SRL Concentration by Non-Appeal Matter Type*

The concentration of SRLs across different matter types may inform the scope of the need of potential applicants. If entirely private actions — like contract matters or estate-related matters — evidence high-SRL concentrations, there is little alternative to greater broad-based legal aid funding. Alternatively, if matters involve the government as a respondent or interested party, there are substantial alternative policy levers to prevent the need for litigation.

Excluding matter types with less than 10 instances to abate reliability concerns, the following table shows SRL prevalence by matter type ordered by SRL prevalence.

87 D'Andrea (n 13) 33. See also: *Cachia v Hanes* (n 26); *Kenny v Ritter* (n 34); *Badcock (No 1)* (n 39).

88 See: McIntyre et al (n 10); Kirimof and Dober (n 11) 30–1. Cf D'Andrea (n 13) 33.

Table 3: SRL Prevalence by Non-Appeal Matter Type

Matter Type	Number of Instance of Matter Type	Number of Applicant SRLs	% Applicant SRL
SACAT	34	19	55.88
Judicial Review	53	24	45.28
Debt Recovery	11	2	18.18
Personal injury — medical negligence	13	2	15.38
Personal injury — other	13	2	15.38
Extend Caveat — *Real Property Act*	33	5	15.15
Negligence	19	2	10.53
Equity	34	3	8.82
Other	277	23	8.30
South Australian Employment Tribunal	17	1	5.88
Contract Dispute	59	3	5.08
Application Corporation	93	4	4.30
Real Property Act Other (other)	33	1	3.03
Provision out of estate — Inheritance	163	2	1.23
Corporations Act	20	0	0.00
Land	12	0	0.00
Personal injury — motor vehicle	24	0	0.00

Two matter types substantially exceed the general distribution of SRL applicants. Around 56% of judicial review applications (n=34) and around 45% of SACAT-related applications (n=53) were brought by SRLs. The prevalence of SRLs in these two types of matters roughly match the proportion of civil appeal matters brought by SRLs (48%) The prevalence of SRLs in all other matter types is notably lower, and closer to the 10% baseline prevalence of SRLs in non-appeal matters identified earlier.

Notably, both judicial review and SACAT application matter types can be described as quasi-appeals, in that the Court is not the first adjudicative institution dealing with a particular subject matter. In each of these quasi-appeals, and civil appeals themselves, the applicant is seeking further redress from another adjudicator's decision — whether an administrative decision of a state government in the case of judicial review; further appeal of the SACAT's decision; or an appeal of an unsuccessful matter in the Supreme Court.

In these instances where government possesses a substantial degree of control of downstream processes, there is an alternative arena in which to improve litigant outcomes. Governments can instead modify legislative schemes under which rights arise, improve internal departmental governance and review processes, and add or strengthen pathways into lower-tier dispute resolution mechanisms such as tribunals. Enacting change at this level may avoid the challenges associated with modifying the entrenched procedures of the Superior Courts. Particularly, given that these courts continue to deal primarily with factually and legally complex disputes, and

for most causes of actions hear matters with litigants represented by lawyers, any potential reforms may harm elements of the system designed over decades, even centuries, to best resolve these complex disputes.

The concentration of SRLs in judicial review and appellate matters also supports recent judicial and academic focus on the rise of 'pseudolaw'.[89] These litigants, particularly the subcategory of sovereign citizens, are characterised by their distrust of government authority.[90] Many are relentless in bringing actions against government decisions and are known for pursuing appeals which have no legal basis.[91] In addition, these litigants are generally unable to pursue actions with the assistance of legal representation as a legal practitioner would be unable to bring these actions to court without acting in breach of the *SALPCR*.

A high volume of SRLs in these specific categories of matters, therefore, may suggest a unique manifestation of increased SRL prevalence unrelated to a lack of legal aid resourcing. The headline SRL prevalence figures produced in this comment may need to be further moderated for the purpose of assessing the general deficiency of legal aid in civil matters. Excluding these three matter types, SRL applicant prevalence falls to just 6% in the Supreme Court — far below figures that have been quoted in commentaries on this topic, albeit that some of these refer to lower courts and include SRLs as respondent as well, whereas the dataset analysed in this comment relates only to superior courts and to SRLs as applicant.[92]

F *Hearing Instances and Matter Duration*

A common viewpoint is that SRL-led matters increase the workload upon courts and are otherwise less efficient than practitioner-led matters.[93] The dataset allows the assessment of two factors which could evaluate that hypothesis — the number of hearings held in a matter, and the total duration of a matter. This section will analyse these matter attributes in relation to all non-excluded matter types, i.e., including both appeal and non-appeal matter types.

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89 South Australia, especially, has been the subject of substantial inquiry on the issue of pseudo-law litigants led by Joe McIntyre (University of South Australia), which resulted in the publication of the following report: McIntyre Report (n 20); and in addition, an article published in this issue of the *Adelaide Law Review* (n 10).

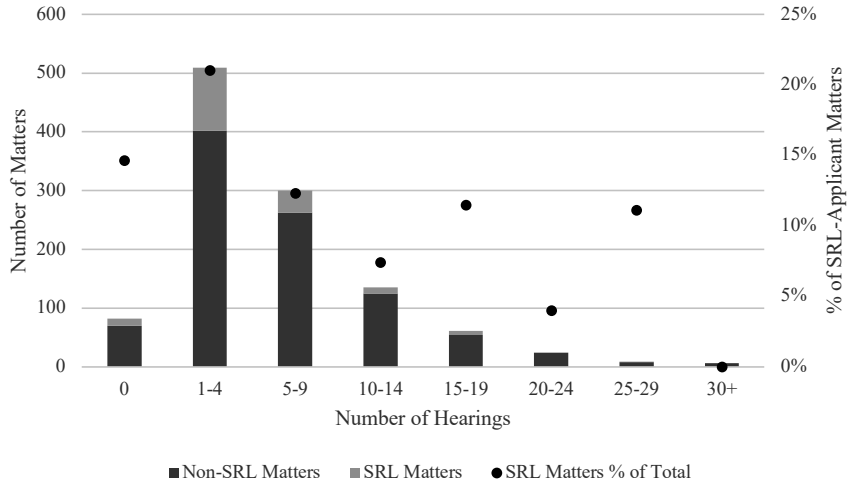
90 McIntyre Report (n 20) 8–13.

91 See: ibid; *Four Corners Investigation* (n 10).

92 See, e.g.: Jess Smith and Victoria Worrell, 'Assessing the Impact of Self-Represented Litigants' (2015) 37(9) *Bulletin (Law Society of South Australia)* 15; Margaret Castles, 'Self Represented Litigants: A Major 21st Century Challenge' (2015) 37(9) *Bulletin (Law Society of South Australia)* 14.

93 See: Kirimof and Dober (n 11) 30; *SRL Forum* (n 15) 2; *Productivity Commission Report* (n 17) 487; *Cachia v Hanes* (n 26) 415.

Figure 3: Number of Hearings per Matter, Distinguished by SRL Status



Recall that SRL prevalence in the Supreme Court across *all* non-excluded matters is 15.5%. Therefore, the hypothesis would be validated if the proportion of matters with high numbers of hearings (e.g., 10+), show an SRL prevalence of greater than 15.5%.

Only matters with 1–4 hearings show an elevated SRL prevalence, with 21% of these matters having an SRL applicant. In contrast with the hypothesis, the SRL prevalence markedly reduces amongst matters with high numbers of hearings. Despite the specific proportion having substantial variance across the 'Number of Hearings' groupings, there is still an evident downward trend.

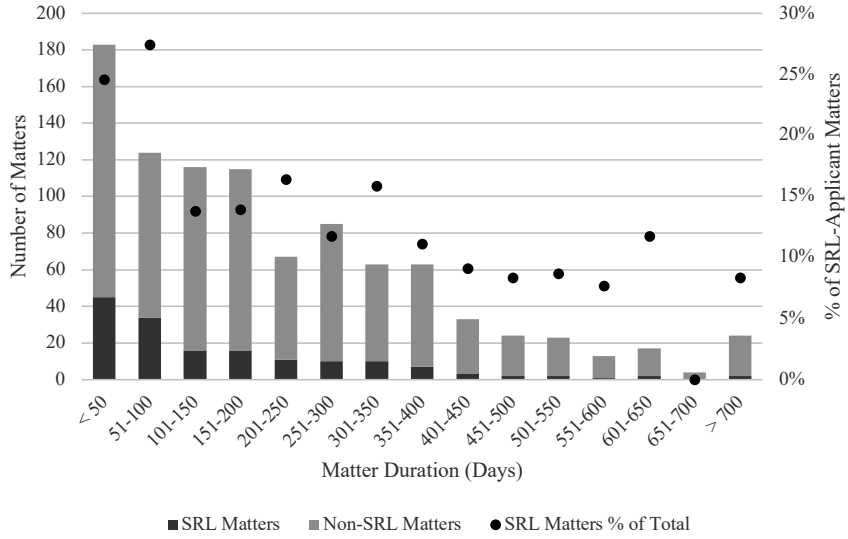
Table 4: Number of Hearings and Proportion of SRL-Brought Matters[94]

# of Hearing	Total # of Matters	% of SRL Matters
0	82	14.6%
1–4	509	21.0%
5–9	300	12.3%
10–14	135	7.4%
15–19	61	11.5%
20–24	25	4.0%
25–29	9	11.1%
30+	6	0%

94 Note reliability concerns for number of hearings 20–24, 25–29, 30+ as there were only 25, 9 and 6 total matters in these groups respectively, and only 1, 1 and 0 SRL-applicant matters respectively.

In fact, when comparing the average number of hearings between all non-SRL matters and all SRL matters, the opposite of what is predicted by the hypothesis appears to be true. Whereas, on average, an SRL matter requires 4.5 hearings over the matter's lifetime, a non-SRL matter requires 6.4. This suggests that any increased workload resulting from SRLs is not found in the number of times the court is called to deal with the matter.

Figure 4: Matter Duration and Proportion of SRL Matters



For both SRL and non-SRL matters, the data showed a positively skewed distribution, i.e., a larger number of matters were resolved in a shorter duration of time. Of all matters finalised, the average duration of an SRL-applicant matter was 163 days, compared to 208 days for non-SRL matters. Again, the SRL prevalence across this dataset does not correspond to a view that SRL-applicant matters take longer to finalise. In fact, there is a clear downward trend in the proportion of matters with SRL applicants (marked by black points) as the duration of matters increases.

To statistically assess the hypothesis that SRL matters take longer to finalise across a skewed distribution, it is appropriate to use the Mann-Whitney-Wilcoxon test. This hypothesis (single tail) was not supported ($p > 1$). However, the opposite hypothesis, that matters not brought by an SRL applicant take longer to finalise, (single tail) was supported ($p = .000001351$; $z = –4.69$, $\alpha = 0.1$).

One mode of analysis was identified that demonstrated a more neutral relationship between matter duration and SRL status. Of the matters yet to be finalised that were commenced in the 2022 calendar year, (i.e., as at the dataset were at least 762 days in duration (and counting) (n=58)), 14% had SRL applicants. This level of prevalence, in line with the baseline average presented above, demonstrates that of the ultra-prolonged matters, SRLs continue to play a role equivalent to their general prevalence in the court system.

Taken together, an interesting pattern can be surmised: SRL matters tend to finalise within 1–4 hearing instances and within 200 days at a greater rate than non-SRL matters; on average, SRL matters require fewer hearings, and are around 20% shorter in duration than non-SRL matters; however, a small number remain very protracted at a similar rate to their general proportion of all matters.

Admittedly, this data does not speak to the duration of each hearing instance, or the qualitative difficulty of each hearing for judicial officers. However, it remains notable that the pattern identified, at least in the metrics that the data is able to speak to, does not support the hypothesis of an increased workload on courts resulting from matters with SRL applicants when measured by either the number of hearings required in a matter or the length of time taken to resolve the matter.

While the data is far from conclusive, what this comment hopes to do is enable focussed study on these issues — informed by qualitative data — to improve the accessibility of definitive answers.

For example, because this quantitative study does not identify an increase in either the number of hearings or duration of a matter to resolution in cases involving SRLs, a qualitative study on the nature of the hearings in matters brought by SRLs may be an appropriate next step. If sheer volume isn't the cause of the additional workload, then it is necessary to examine the extra judicial labour involved in detail, or conduct special research beyond the standard reporting of court administrators to map the complexity of matters with SRLs. Due to the labour-intensive nature of qualitative, interview-based studies, the authors view the ability to rationally narrow the scope of such studies as particularly valuable.

IV Conclusion

This comment seeks to make a supportive contribution to Australian scholarship by adding to the pool of data available for understanding issues relating to access to justice in the context of SRLs. The most prominent features of the dataset analysed are as follows:

(1) Approximately 10% of the Supreme Court of South Australia's original jurisdiction civil workload features a matter with an SRL applicant; approximately 15.5% of its total civil workload (i.e., including appeals) feature an SRL applicant.
(2) SRLs are highly concentrated in three matter types: civil appeals, SACAT-related matters, and judicial review. In each of these three matter types, matters with an SRL applicant make up approximately 50% of all matters.
(3) Appeals brought by SRLs are approximately 45% more likely to be dismissed than appeals brought by represented appellants.
(4) There is no connection between a matter being brought by an SRL applicant and an increase in either the total number of hearings, or the total duration of a matter. In fact, there is a statistically significant reduction in total matter duration associated with SRL-applicant matters.

This contribution comes at a time of heightened attention on SRLs in Australia, and indeed in many of our common law counterparts. While recognising the boundaries set for the purpose of this comment, the authors hope that some of the points of discussion raised, and the patterns identified in this data, can be put into context with broader policy analysis and discussion to inform Australia's approach to improving access to justice.

At the very least, the dataset requires observers to abandon any sense of a monolithic SRL issue — the distribution of SRLs across courts is simply not even. Returning to the comments made by Judge Faulks, this realisation may encourage policymakers to pay close attention to the third of his Honour's solutions, that is: 'to change the system'.[95]

South Australia's minor civil jurisdiction already serves as an example where a unique group of matters resulted in the introduction of special rules — simplifying and excluding select procedural requirements, and restricting representation in the first instance.[96] But this approach would not have achieved the same positive response across the Magistrates Court's work. Rather than changing the *UCR*s for all matter types and jurisdictions, empirical findings of the sort contained in this comment invite policymakers to consider focussing in on quasi-appeals to create a separate jurisdiction designed to deal with the subject matter — with flexible procedure, an expectation that the court may step in and 'sieve through … to disclose a cause of action',[97] and at the same time allow for the Court to exercise greater summary judgment powers to recognise the heightened volume of querulant litigants unique to these apparently anti-government matter types.

The authors hope that this comment is not just an outlier in a continued vacuum of data — this comment captures just a small snapshot of the dataset relatively readily accessible in South Australia, yet both validates some popular narratives, while challenging others. Every popular narrative challenged by empirical datasets represents potential resources not wasted. Empirical data on the administration of justice must always be welcomed to allow for special treatment to be focussed on the special issues facing the justice system. Doing so maximises the chance of achieving meaningful, pragmatic policy outcomes.

95 Faulks (n 3) 2 [3].

96 See e.g.: *Magistrates Court Act 1991* (SA) ss 38(1), (4); *UCR* (n 14) ch 24.

97 *Badcock (No 1)* (n 39) [36] (Lee J). See also the discussion above in Part II(B)(1).