

Pacific Judicial Conference

# Access to Justice: Unrepresented Litigants

Auckland March 2014



# Types of Litigants

- **The genuine self-represented**
- **The destabilised self-represented**
- **The querulous self-represented**



# Current Victorian Situation: A Snapshot

- **1597 Self-represented litigants (SRLs) approached the Court in 2012-13**
- **Burden on the Court of Appeal and the Practice Court**
- **Percentage of civil appeal initiations: 8.4% in 2001 up to 23% in 2013**
- **20% of appeals and reviews to the trial division**
- **Repeat litigants and lack of funding**



# Impact on the Court of Appeal

- **Vexatious litigants: 33 of the 60 SRL cases filed by only 11 individuals in 2012**
- **Harder line on fee waiver arrangements**
- **Explain cost implications of unsuccessful application**
- **Civil appeal reforms: require written case summaries with grounds of appeal**



# Impact on the Practice (Duty) Court

- 190 cases in the Practice Court in 2012-13
- 285 cases in the Associate Judges Court 2 in 2012-13
- 25% of these cases are appeals or judicial review; 30% are commercial
- *Practice Note regarding Appeals from Associate Judges to Judges of the Trial Division 2012*
  - Court fee on appeal
  - Appeals by way of re-hearing rather than re-hearing de novo
  - Appeal Book required
- Result: decrease in SRL cases in Practice Court



# Case Study: Slaveski

- Commenced 11 vexatious proceedings and 8 other proceedings over six years; a 100 day trial
- Prosecution: threats to kill
- “Vexatious litigant” under s21 of the Supreme Court Act 1986: application too late
- Time-wasting and stress for judiciary and staff: security issues, abusive language, no-shows for court appearances
- Threats, accusations of bias and corruption against individual judges
- Vexatious proceedings as a matter of course to challenge adverse decisions regardless of the merits
- Victorian Duty Barristers Scheme representation



# Case Study: Vasiliou

- Threatening and abusive email to presiding judge
- Contempt of court proceeding
- Allegations by email of corruption to intimidate presiding judge
- Raised irrelevant issues: sense of injustice about misconduct by people not party to the proceeding
- Failed to engage with central issues
- Vasiliou jailed for contempt



# Vexatious Litigants Bill

- **Three-tier system of litigation restraint orders**
- **Acting in concert order and appeal restriction order**
- **Court may dismiss an application for leave to proceed if same as previous application**
- **Application for leave to proceed determined on basis of written submissions**
- **Appeals on question of law to Supreme Court**





# Self-represented Litigants Co-ordinator

- **Gatekeeper and contact person for SRLs**
- **Only 30% of contacts result in court action**
- **Provides information: civil procedure, court forms and fees, risk advice**
- **Referrals to legal service providers**
- **Mitigate stress on staff and judiciary**
- **Expedites SRL proceedings**



# Self-represented Litigants Co-ordinator Role Review

- **No time for ongoing case management support for the judiciary**
- **Legal referrals and initial reality checks for clients works well**
- **Need for plain language and digital information to assist SRLs**
- **Need for statistics regarding the impact of SRLs**



# Pro-bono Legal Services

- **Victorian Bar Duty Scheme**
- **Since 2008, 109 matters referred to the scheme for one-off legal assistance**
- **PILCH: 555 referrals in Victoria in 2011-12**
- **Many commercial cases do not fit PILCH eligibility criteria**



# Pro-bono Legal Services

- **A discrete task legal service for SRLs?**
- **Funding**
- **Targeting areas of greatest unmet legal need eg appeals and judicial review**
- **Defined practice area or cause to attract pro-bono lawyers**
- **No evidence base re SRLs to demonstrate their disadvantage**



# Summary

- **Improve data collection about self-represented litigants**
- **ROGS Working Group and AIJA**
- **Evaluate costs of SRLs to justice system to support case for funding**
- **Provision of duty solicitors in court**
- **Filter system to provide early advice**
- **Facilitate the appointment of litigation guardians**
- **Judicial education**
- **Review the availability of fee waivers**
- **Expansion of legal aid in civil matters**
- **Need for psychiatric training for people involved in dealing with SRLs**
- **Triage judges**



