

**LEGAL AID AND
SELF-REPRESENTATION
IN THE
FAMILY COURT OF
AUSTRALIA**

A study to examine the relationship between the limited availability of legal aid funds for family law matters and the phenomenon of self-representing litigants in the Family Court.

Rosemary Hunter, Jeff Giddings and April Chrzanowski

Socio-Legal Research Centre
Griffith University

May 2003

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Executive Summary

1. Introduction

The objectives of the research were to determine:

1. What proportion of self-represented litigants in the Family Court have applied for legal aid?
2. If they have applied, on what basis have they been unsuccessful (e.g. means or merit)?
3. If they have been unsuccessful on the basis of merit, whether this is a funding related issue, i.e. because the merit test is being read narrowly due to funding constraints?
4. If they have been unsuccessful on the basis of means but are unable to afford a private practitioner, is the means test set at a reasonable level? What would be the effect of a particular gap/margin in the means test?
5. What proportion of self-represented litigants have had legal aid at some point, why they no longer have legal aid, and whether this is a funding related issue?

The research was conducted in three Registries of the Family Court of Australia – Melbourne, Brisbane and Canberra – and in the Family Court of Western Australia in Perth. The four Legal Aid Commissions that participated in the project were Victoria Legal Aid, Legal Aid Queensland, the ACT Legal Aid Commission, and the Legal Aid Commission of Western Australia.

A considerable amount of research has now been undertaken in response to the emerging phenomenon of self-represented litigants in the Family Court. Some of this research has been concerned with the impact of legal aid cuts. Other studies have documented how the presence of self-represented litigants impacts on participants in Family Court processes. A third group of studies are those addressing how courts might best accommodate self-represented litigants.

While cuts to legal aid have been widely assumed to have caused an increase in the number of unrepresented parties, this has not been demonstrated by empirical evidence. The one previous study looking at this issue over time found that by mid-1999, the legal aid cuts initiated in July 1997 appeared to have had little impact on the levels of self-represented litigants in the Sydney, Parramatta and Adelaide Registries of the Family Court. That study observed, however, that it was more common for parties to have partial representation (i.e. to be un/represented for some but not all of their case) than to be fully self-represented. Another study involving interviews with a small number of self-represented litigants found that only one third had applied for legal aid, and over half of those who had not applied had either been told or believed that they were not eligible for legal aid.

The current study is the first research to focus in a sustained way on the link between self-representation and the availability of legal aid funding in family law, to employ both quantitative and qualitative approaches to the question, and to gather information from both self-representing litigants and Legal Aid Commissions.

2. Methodology

The methodology for the study involved the face-to-face administration of a semi-structured questionnaire to litigants in the Family Court who either appeared unrepresented, or were currently represented but had been unrepresented at some stage in the past, concerning their experience with legal aid. Questionnaire respondents who had ever applied for legal aid were also asked for their permission for their Legal Aid Commission files to be cross-checked for the research. Where they gave permission, files were checked by Legal Aid Commission staff according to a standard set of file questions.

In each of the four Family Court Registries, the research was conducted for 20 consecutive business days on which a duty list was heard by the court. The data collection commenced on 2 December 2002 in Brisbane and concluded on 17 February 2003 in Perth. This timing coincided with the pre-Christmas rush in Brisbane and the post-New Year lull in Melbourne and Canberra. Another difference between Registries was the fact that in Perth, it was necessary to incorporate Court of Petty Sessions cases, while elsewhere it was possible to distinguish between Family Court and Federal Magistrates Court cases. Potential differences between Registries have been factored into the data analysis.

A total of 495 respondents were interviewed, of whom 117 gave permission for their legal aid files to be checked. Although it was not possible to determine the exact number of currently or previously self-represented litigants who appeared in each of the Registries during the relevant period, we estimate that we achieved a response rate of at least 34%.

Legal Aid Commissions found it difficult to retrieve information on a litigant's entire legal aid history, and so provided information only on the most recent legal aid application by each litigant who gave permission for their file to be viewed. Although this resulted in some mismatches, in the great majority of cases we were able to compare the litigant's account of their legal aid application with the legal aid file relating to that application.

3. Overall Responses

Of the 495 litigants interviewed, 85% were currently self-represented and 15% were currently represented. We interviewed higher proportions of currently represented litigants in Canberra and Melbourne than in Brisbane and Perth.

Forty-eight per cent of the litigants interviewed had applied for legal aid. Of these, 42% gave permission to look at their legal aid file. Litigants in Canberra and Melbourne were most willing to give permission, while those in Perth were least willing to do so.

4. Respondent Characteristics

Half of the litigants interviewed were male and half were female. Twelve litigants – all currently self-represented – identified as Aboriginal or Torres Strait Islander. Just over one quarter of litigants were born outside Australia, and just under half of these

were born in a non-English speaking country. Nine per cent of litigants spoke a language other than English at home.

The great majority of litigants interviewed were aged 20-49. However, 10 litigants – all currently self-represented – were aged under 20 years or over 60 years. Two thirds of litigants lived in metropolitan areas and one third in regional areas. Brisbane litigants were most likely to live in regional areas and Perth litigants were most likely to live in metropolitan areas. Canberra litigants were most likely to live outside the jurisdiction (in other parts of NSW).

Half the litigants interviewed did not currently have paid work. Those in paid work were more likely to be currently self-represented, while those not in paid work were more likely to be currently represented. Almost 60% of litigants were in receipt of some type of government benefit, although again, currently represented litigants were more likely to be in receipt of benefits than were currently self-represented litigants. Currently self-represented litigants were more likely to have an after-tax income of between \$25,000 and \$39,999 per annum, while currently represented litigants were more likely to have an after-tax income under \$25,000, or over \$40,000. This pattern suggests that people who are employed but earning less than \$40,000 after tax are ineligible for legal aid but feel unable to afford a lawyer, and consequently decide to self-represent, while those earning more than \$40,000 after tax feel more able to afford their own lawyer.

The most frequently cited issues in the cases of the litigants interviewed were contact, residence, and recovery/enforcement/contravention.

The majority of litigants who were currently represented but had been previously self-represented had represented themselves for work prior to or apart from court appearances. Around one third had represented themselves for one or more court appearances.

5. Research Questions

5.1 What proportion of self-represented litigants in the Family Court have applied for legal aid?

Only around half of self-representing litigants had applied for legal aid. Of those who had not applied for legal aid, only one quarter preferred to represent themselves for reasons unrelated to legal aid. The remaining three quarters had not applied for legal aid for reasons related primarily to the means test, but also for a range of other legal-aid related reasons. A substantial proportion of these litigants had had contact with a legal aid office, either through previous experience of a legal aid application, or via a recent enquiry as to their eligibility for legal aid.

Self-representing litigants who had not applied for legal aid included a number who intended but had not yet had time to make an application. This reason was particularly evident in the Melbourne Registry after the Christmas-New Year break.

5.2 If they have applied, on what basis have they been unsuccessful (e.g. means or merit)?

Between half and two thirds of SRLs who had applied for legal aid had been unsuccessful in their applications. Approximately 25% of rejections were based on means, 25% on guidelines, 5% on the legal aid funding cap, and 15-20% on ‘other’ reasons. At least 30% of rejections were based on the merits test.

Further, between one third and one half of those SRLs who had received a grant of legal aid had subsequently had the grant terminated or not extended, or the grant had not covered court proceedings in the first place. These litigants were therefore self-representing not because their legal aid application had been unsuccessful, but because their access to legal aid funds had been exhausted.

There were evident differences between Registries in both relative success rates in legal aid applications, and the reasons why applications were unsuccessful. These differences appear to reflect the respective family law funding positions of the Legal Aid Commissions. In Brisbane, where demand for family law legal aid funding considerably exceeds the available supply, applicants were more likely to be unsuccessful, and applications were more likely to be rejected on the basis of merits. In Melbourne, where the reverse situation applies, applicants were more likely to be wholly successful, and applications were more likely to be rejected on the basis of means. In Canberra and Perth, which fall somewhere between, applications were more likely to be partially successful.

5.3 If they have been unsuccessful on the basis of merit, whether this is a funding related issue, i.e. because the merit test is being read narrowly due to funding constraints?

No changes in the application of the merits test were discernible over time, however as just noted, there were differences in the application of the merits test between Legal Aid Commissions. LAQ’s application of the merits test differed both quantitatively and qualitatively from that of the other Commissions. The legal aid file data suggests that LAQ applies the test both more extensively and with greater rigour than do the other Commissions. Given the particular funding shortfall experienced by LAQ in relation to family law applications, its reading of the merits test may be presumed to be attributable to funding constraints.

5.4 If they have been unsuccessful on the basis of means but are unable to afford a private practitioner, is the means test set at a reasonable level? What would be the effect of a particular gap/margin in the means test?

As noted above, approximately 25% of self-representing litigants who had been refused legal aid had been refused on the basis of means. But just as importantly, the majority of self-representing litigants who had not applied for legal aid had considered or been told that they were ineligible on the basis of means. Considering all of the data available to address this question, we can suggest three ways in which the means test could be adjusted in order to reduce the level of self-representation in the Family Court. These are:

1. take into account the question of whether the litigant has realistic access to assessable assets

2. take into account previous attempts to pay for private legal representation and existing debts to previous legal representatives
3. extend eligibility to include a higher proportion of clients earning less than \$30,000 after tax.

The data indicates that the means test has a similar impact across Registries, hence these adjustments should apply generally.

5.5 What other Legal Aid Commission services are accessed by self-representing litigants?

The fifth research question asked what proportion of self-represented litigants have had legal aid at some point, why they no longer have legal aid, and whether this is a funding related issue. This question is answered in section 5.2. However, the Legal Aid Commissions also requested that the research provide information on the needs of self-represented litigants, to assist in policy development regarding provision of advice, minor assistance, and so forth.

The majority of SRLs had used other services provided by Legal Aid Commissions to assist them in conducting their cases. The most commonly used services were advice services (appointments with legal aid lawyers, telephone advice and advice sessions), and assistance with documents or letters. In Victoria, the Family Court duty lawyer service was also heavily patronised by SRLs. Referrals to Community Legal Centres were also made in a substantial minority of cases, and it can be assumed that CLCs are also being called upon to provide various forms of assistance to SRLs.

6. Conclusion

The results of the research makes it clear that there is an extensive relationship between the unavailability of legal aid and self-representation in the Family Court. That relationship is found not just in legal aid rejections or terminations, but also in non-applications for legal aid. They also show that in some cases, litigants may appear unrepresented even while holding a grant of legal aid.

The research examined the respective associations between the means test and the merits test and self-representation. The data suggests that the level at which the means test is currently set does not accurately reflect the level at which people can and cannot afford to pay for their own lawyer, but rather creates a group of people who are not eligible for legal aid but who are unable to afford private representation. These people become self-representing. The data indicates that private legal representation only becomes affordable at an after-tax income level of around \$40,000.

In Brisbane, it appears that the means test filters out a lower proportion of applicants and prospective applicants than is the case in other States. This in turn suggests a particular shortage of funding relative to demand and 'objective' eligibility, which can only be mitigated by more extensive application of the merits test. While the level at which the means test is set affects litigants nationally, there appears to be an additional shortfall affecting Queensland litigants in particular, which is evidenced by the way in which the merits test is applied by LAQ.

Finally, other non-means and merits-tested, non-representation services provided by Legal Aid Commissions prove to be an important source of assistance for self-representing litigants. Interactive services such as legal advice sessions, telephone or in person advice, assistance with documents and letters, and duty lawyers, were the most frequently used services. It is clear that these services perform an important role for those litigants who are otherwise ineligible for legal aid and are self-representing as a result.

1. Introduction

1.1 The research project

Professor Rosemary Hunter and Associate Professor Jeff Giddings, of the Socio-Legal Research Centre (SLRC), Griffith University, were commissioned by National Legal Aid to conduct research on the relationship between the limited availability of legal aid for family law matters and the phenomenon of self-representing litigants in the Family Court.

The objectives of the project were to determine:

1. What proportion of self-represented litigants in the Family Court have applied for legal aid?
2. If they have applied, on what basis have they been unsuccessful (e.g. means or merit)?
3. If they have been unsuccessful on the basis of merit, whether this is a funding related issue, i.e. because the merit test is being read narrowly due to funding constraints?
4. If they have been unsuccessful on the basis of means but are unable to afford a private practitioner, is the means test set at a reasonable level? What would be the effect of a particular gap/margin in the means test?
5. What proportion of self-represented litigants have had legal aid at some point, why they no longer have legal aid, and whether this is a funding related issue?

The research was intended to provide Legal Aid Commissions with data regarding the link between lack of legal aid funding and self-represented litigants which could inform renegotiation of funding agreements. The research was also intended to provide data on the extent to which additional funding may be required to enable Commissions to ease the means test. It was also hoped that the research could provide useful information on the needs of self-represented litigants and assist in policy development for Commissions regarding provision of advice, minor assistance, and so forth.

After discussions with the researchers, National Legal Aid determined that the research should be conducted in three Registries of the Family Court of Australia – Melbourne, Brisbane and Canberra – and in the Family Court of Western Australia in Perth. Accordingly, the four Legal Aid Commissions that participated in the project were Victoria Legal Aid, Legal Aid Queensland, the ACT Legal Aid Commission, and the Legal Aid Commission of Western Australia. Legal Aid Queensland assumed the role of contractor with the researchers.

The Steering Committee for the project consisted of Grants Managers from the four participating Legal Aid Commissions, and Ms. Louise Smith, Executive Officer, National Legal Aid. The researchers met with the Steering Committee once a month by teleconference, and provided verbal reports on progress. The Steering Committee also provided feedback on draft data interview schedules and data gathering

instruments, and answered queries raised by the researchers on particular local policies and practices.

Permission was sought and obtained from the Chief Justices of the Family Court of Australia and of the Family Court of Western Australia to conduct research in the relevant Registries of the Family Court.

The researchers would like to thank the following for all of their assistance with the project:

- the Chief Justices of the Family Court of Australia and Family Court of Western Australia
- the Family Court Registry Managers in Brisbane, Melbourne, Canberra and Perth
- the Legal Aid Grants Managers and members of the Steering Committee – Ross Beer, Sonya Davidson, Ian Campbell, Tonye Lee and Maureen Kavanagh – and their staff
- our research assistants: Kelly McIntyre, Jeff Bunning, Jayne McCubbin, Diane Mailer, Nick Hodges, Leszek Stawski, Nicola Gannon and Tess Burton
- National Legal Aid Executive Officers Jenny Hardy and Louise Smith.

1.2 Context and Literature Review

It is clear that litigants appearing without legal representation (variously described as ‘self-representing litigants’, ‘unrepresented litigants’ or ‘litigants in person’) are an important part of the landscape of the Family Court of Australia. In a 1998 study, Dewar, Giddings and Parker concluded, based on interviews with a range of interested parties, that there was little doubt that the numbers of unrepresented litigants had grown markedly in the five years, 1993 to 1998.¹ In the same year, a study by Smith for the Family Court, which purported to document the impact of legal aid cuts on the representation of litigants coming before the Court, gave a figure of 35% of cases involving an unrepresented litigant.² An Australian Law Reform Commission (ALRC) study in 1999 found that 41% of family law cases involved at least one party being totally or partially unrepresented and that these parties were most likely to be respondents in children’s cases.³ A subsequent study by Hunter, Genovese, Chrzanowski and Morris, which looked at cases filed in the Family Court in 1995-99, found a steady rise in the proportion of litigants who were fully unrepresented, albeit only from 4.6% to 9%,⁴ but with 47% of cases across the five year period involving a party who was not legally represented at some stage of their case.⁵

¹ J. Dewar, J. Giddings & S. Parker, *The Impact of Legal Aid Changes on Criminal and Family Law Practice in Queensland*, 1998, 95

² B. Smith, *1998 Study of the Effects of Legal Aid Cuts on the Family Court of Australia and its Litigants*, Research Report No 19, 1999

³ Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89, 2000, 302

⁴ R. Hunter, A. Genovese, A. Chrzanowski & C. Morris, *The Changing Face of Litigation: Unrepresented Litigants in the Family Court of Australia*, (2002) Law and Justice Foundation of New South Wales, vii.

⁵ *Ibid*, 41

Hunter *et al* note that a considerable amount of research has now been undertaken in response to the emerging phenomenon of self-represented litigants in the Family Court.⁶ Some of this research has been concerned with the impact of legal aid cuts. Other studies have documented how the presence of self-represented litigants impacts on participants in Family Court processes. A third group of studies are those addressing how courts might best accommodate self-represented litigants.

Importantly for the current study, the ALRC noted that while cuts to legal aid were widely assumed to have caused an increase in the number of unrepresented parties, this was not demonstrated by empirical evidence.⁷ Hunter *et al* found that the legal aid cuts initiated in July 1997 appeared to have little impact on the levels of self- and partially represented litigants in the Family Court Registries that they studied.⁸ Several factors were suggested as helping to explain this apparently limited impact, including the fact that unemployment was falling during 1997-98 and 1998-99,⁹ and the fact that two of the three Registries included in the study were located in NSW, but it was not until mid-1999 (ie. after the Hunter *et al* study was completed) that the NSW Legal Aid Commission began to severely restrict family law spending.¹⁰ Hunter *et al* observed, however, that it was more common for parties to have partial representation than to be fully self-represented.

The Hunter *et al* study found that self-represented litigants were more likely to be male,¹¹ and significantly more likely to be reliant on welfare payments as their main source of income.¹² At both first instance and on appeal, cases involving a self-representing litigant were much more likely to involve only children's matters, to be of shorter duration and to finalise earlier in the process.¹³

The ALRC noted that family law matters 'require a service delivery model which streams cases to receive the right kind of assistance. Grants of aid for early case preparation, negotiation and evidence gathering can help cases to resolve early and to identify and decipher issues. Funding guidelines which are too prescriptive, or intake procedures which are too attenuated, create difficulties in family law cases.'¹⁴ The research by Dewar, Giddings and Parker identified tighter legal aid guidelines and caps on grants of assistance as the most significant legal aid changes that may have led to an increase in self-representing litigants.¹⁵ Many witnesses reported to the ALRC about problems caused by legal aid caps, yet legal aid commission statistics, and the study by Hunter *et al* of *Legal Services in Family Law* indicated that caps were seldom reached.¹⁶ That report also suggested that stage of matter limits, restrictions imposed on legal aid grants, and terminations of aid for a variety of

⁶ Ibid, 4

⁷ Australian Law Reform Commission, *Review of the Federal Civil Justice System Discussion Paper* 62, 1999, 375

⁸ Hunter *et al*, above, n.4, 33

⁹ Hunter *et al*, above, n.4, 36

¹⁰ Hunter *et al*, above, n.4, 34

¹¹ Hunter *et al*, above, n.4, 50

¹² Hunter *et al*, above, n.4, 55

¹³ Hunter *et al*, above, n.4, 73

¹⁴ ALRC, above, n 3, 334-5

¹⁵ Dewar *et al*, above, n. 1, 96

¹⁶ ALRC above, n. 3, 338. R. Hunter, with A. Genovese, A. Melville & A. Chrzanowski, *Legal Services in Family Law*, 2000, 231.

reasons, were likely to have more of an impact than the overall cap itself.¹⁷ More than half (54%) of respondents to the 1999 ALRC survey advised that the main reason they did not have a lawyer was either their inability to pay for representation or the unavailability or cessation of legal aid.¹⁸

For their Family Court-commissioned 1999 study, Dewar, Smith and Banks interviewed forty nine self-represented litigants. Sixteen of these had applied for legal aid but only two had received a grant of assistance. Importantly for the current study, the thirty three litigants who had not applied for legal aid included ten who had been told they were not eligible and nine who did not think they were eligible.¹⁹ It was also noted that some litigants 'seemed to have limited knowledge of the availability of legal aid'.²⁰ Interviews with judges, judicial registrars and registrars also elicited a view that 'There is a fairly substantial group which is not poor enough to qualify for legal aid and yet not rich enough to afford representation, especially for defended hearings and protracted matters.'²¹ Dewar *et al* also noted that the large number of litigants who had not applied for legal aid suggested that legal aid refusal rates might not on their own be an adequate measure of the impact of changes in legal aid funding.

Dewar *et al* argued that greater investment in legal aid funding would achieve cost savings to the Family Court system because of an identifiable link between the unavailability of legal aid and self-representation as well as their finding that litigants in person consume more court resources than represented parties.²² In fact, the Hunter *et al* study indicated that self-represented litigants exhibit a bifurcated pattern of resource consumption, with a substantial proportion of self-represented litigants exiting the system at an early stage, in some way 'vanquished' by the process, while the second group of self-represented litigants pursue the litigation pathway much further than average, and exact a heavy cost on the Court and opposing party along the way.²³ Significantly, fully unrepresented litigants tended to fall into the former group, while partially represented litigants tended to fall into the latter group.

Finally, Hunter has noted that where one or both parties is self-representing, the court tends to use the child representative as a *de facto* counsel assisting the court.²⁴ This practice, which places an enormous burden on the child representative, is likely to continue given that legal aid will often fund a child representative while refusing to fund legal representation for the parents.²⁵

The existing literature, therefore, demonstrates both a concern about the relationship between limited legal aid funding for family law and the phenomenon of self-representation in the Family Court, and a concern about the adverse impacts of self-

¹⁷ Hunter *et al*, *ibid*, ch.5.

¹⁸ ALRC, *above*, n. 7, 376

¹⁹ J. Dewar, B. Smith & C. Banks, *Litigants in Person in the Family Court of Australia, Research Report No 20*, 2000, 25

²⁰ *Ibid*.

²¹ *Ibid*, 35

²² *Ibid*, 61

²³ Hunter *et al*, *above*, n 4.

²⁴ R. Hunter, 'Legal Representation in Family Law Disputes: Who Benefits?' Paper presented at the Legal Services Research Centre International Conference 2002, Oxford, Conference Proceedings, 339

²⁵ *Ibid*, 339-340

representation, on the litigants themselves, on the Court, and on other players in the family law system. This is the first study, however, to focus in a sustained way on the link between self-representation and the availability of legal aid funding in family law, to employ both quantitative and qualitative approaches to the question, and to gather information from both self-representing litigants and Legal Aid Commissions.

2. Methodology

The methodology for the study involved the face-to-face administration of a semi-structured questionnaire to litigants in the Family Court who either appeared unrepresented, or were currently represented but had been unrepresented at some stage in the past, concerning their experience with legal aid (see Appendix Two). Student research assistants were hired to conduct the interviews in each Registry, after initial training and supervision by SLRC Senior Research Assistant April Chrzanowski. Questionnaire respondents who had ever applied for legal aid were also asked for their permission for their Legal Aid Commission files to be cross-checked for the research. Where they gave permission, files were checked by Legal Aid Commission staff according to a standard set of file questions (see Appendix Three).

The data obtained from both the litigant questionnaires and legal aid files was entered into a single database to enable cross-matching of responses. Since the data from both sources contained both coded and qualitative responses, data analysis involved both statistical frequencies and cross-tabulations, and the detection of consistencies and patterns in the qualitative data.

2.1 Sampling Issues

2.1.1 Timing of the Survey

In each of the four Family Court Registries, the research was conducted for 20 consecutive business days on which a duty list was heard by the court.²⁶ The timing of the research was dictated by the overall reporting timeline for the project. In order to allow for initial piloting in Brisbane, and for training and supervision of the research assistants in each Registry, the surveys were staggered so that data from each Registry was gathered over a slightly different time period. The relevant dates for each Registry were as follows:

Registry	Commenced	Completed
Brisbane	2 December 2002	14 January 2003
Melbourne	6 January 2003	3 February 2003
Canberra	13 January 2003	14 February 2003
Perth	20 January 2003	17 February 2003

The staggered interview schedule meant that there were some differences in caseflow experienced by each Registry during the sample period. For example, in Brisbane, the pre-Christmas period was very busy, whereas the week in January was quite slow. Melbourne was the first Registry sampled after Christmas, resulting in quite low numbers of cases in the first couple of weeks, although increasing in the last two weeks. The first week of the Canberra survey also coincided with the early January

²⁶ The research was conducted for approximately four hours in the morning of each day, resulting in approximately 80 hours of research time per Registry. In Canberra, the research was actually conducted over more than 20 days, but for fewer hours each day, resulting in the same number of hours overall as for the other Registries.

lull, while the Canberra bushfires resulted in a number of litigants being unable to get to court in the second week.

The timing of the research and the differing caseflows over the survey period in each Registry had two consequences. First, the number of litigants surveyed in some of the Registries (particularly Melbourne and Canberra) was lower than it might have been at other times of the year. However the overall numbers in each Registry were quite respectable, and certainly exceeded initial hopes of around 200 respondents in total:

Registry	Number of Respondents
Brisbane	162
Melbourne	86
Canberra	46
Perth	201
TOTAL	495

All of the Registries thus yielded sufficient numbers of respondents to enable meaningful analysis in relation to the research questions. The number of respondents who gave permission to view their legal aid files was much smaller, however, although this problem may still have arisen even with a considerably larger number of respondents (as evidenced, for example, by the fact that although Perth had the highest number of respondents, it had the lowest number of permissions):

Registry	Legal Aid Permissions
Brisbane	45
Melbourne	29
Canberra	23
Perth	20
TOTAL	117

The number of permissions made it difficult to break down figures within each Legal Aid Commission (e.g. to detect any changes in the application of the merits test over time). However it has been possible to make comparisons between Legal Aid Commissions where relevant.

The second consequence of the timing and staggered nature of the litigant surveys is that the kinds of cases that were sampled (in the pre-Christmas rush and post-Christmas lull) may not have been typical of the usual range of cases heard within each Registry, and that the case-mix may also have varied between Registries. It is difficult to determine, however, whether this would have had any impact on the numbers of currently or previously self-represented litigants appearing in each Registry, or on the reasons why those litigants were self-representing (i.e. their relationship to legal aid). As will be seen in the discussion that follows, there were a number of litigants who said that they were unrepresented because they had not yet had time to apply for legal aid, but were intending to do so. This timing issue may possibly have been affected by the time of year at which the surveys were conducted, and so the proportion of such litigants might perhaps reduce at other times of the year.

2.1.2 Other Differences between Registries

Apart from the staggered nature of the litigant survey, the other major difference between Registries was the fact that the Perth sample included Court of Petty Sessions matters, whereas the Brisbane, Melbourne and Canberra samples did not include Federal Magistrates Court matters. The focus of the study was intended to be on the Family Court, as opposed to the Federal Magistrates Court, which handles simpler cases, and is arguably better equipped to deal with self-represented litigants. Moreover in Brisbane, Melbourne and Canberra, although litigants in both courts might be found in common waiting areas, there is a clear bifurcation of proceedings between the courts, making it possible to distinguish litigants attending the Federal Magistrates Court from those attending the Family Court. In Perth, however, cases may move between the Court of Petty Sessions and the Family Court at different stages, and we were advised that it would be difficult to filter Court of Petty Sessions cases out of the sample. Consequently, the case mix and types of litigants in the Perth sample may differ from those in the samples from the other Registries.

In addition, there are differences between litigant demographics in each Registry, and between Legal Aid Commission policies and practices in each State, that emerge from the data, or that need to be factored into the analysis. In order to allow for possible differences between Registries, each statistical test was broken down by Registry and tested for significant differences between them. In many instances, no difference emerged. When reporting the results of the research, therefore, we have reported only the overall results when there was no difference between Registries, but have highlighted differences between Registries when these were identified.

2.1.3 Response Rate

Our sampling frame was all currently or previously self-representing litigants involved in proceedings listed on the Family Court duty list on the relevant dates in the relevant Registries. The number of matters listed on the duty list during the study period for each Registry were as follows:

Registry	Matters listed on Duty List during study period
Brisbane	562
Melbourne	728
Canberra	191
Perth	692
Total	2173

These figures multiplied by two provide a rough estimate of the number of litigants on the duty list for each Registry. Data from the Hunter *et al* study suggests that around 33% of these litigants might be expected to be currently or previously self-represented. This gives an expected total of approximately 1449 currently or previously self-represented litigants, of whom we interviewed 495 – an estimated response rate of 34.2%. This is a good response rate which means that the litigant sample was reasonably likely to be representative of the population of self-representing litigants as a whole.

Moreover, the actual response rate was probably higher than this, for two reasons. First, the number of cases listed on the duty list can be discounted for the fact that on any given day, there are a number of litigants who do not appear and a number of cases that have already been settled. Secondly, the court lists in the Brisbane and Melbourne Registries did not distinguish between divorce-only cases (which were not included in the study) and other matters. Thus the total number of matters of interest in Brisbane and Melbourne would have been less than the figures in the above table. Both of these factors meant that the total number of currently or previously self-representing litigants appearing at the court in matters included in the study would have been lower than the estimated number given above. A lower population would consequently yield a higher response rate.

2.1.4 Legal Aid Files

As noted above, litigants surveyed who had applied for legal aid were asked for permission to view their Legal Aid file. Only one file of a litigant who gave permission was unable to be retrieved.²⁷ It proved quite difficult, however, for the Legal Aid Commissions to retrieve and analyse each litigant's entire legal aid history for the purposes of the project. Legal Aid Commissions were therefore asked to provide information only on the litigant's *most recent* application for legal aid. Evidently, therefore, legal aid applications referred to by the litigant might not necessarily correspond with the application on which information was provided by the Legal Aid Commission. Indeed, 14 of the 117 litigants who gave permission to view their legal aid file had not applied for legal aid for their current proceedings (eight from Melbourne, four from Brisbane, and one each from Canberra and Perth). A further seven had made no formal application for legal aid for a family law matter, but had only accessed advice or the assistance of a duty lawyer. In the great majority of cases, however, we were able to match the litigant survey and information from the legal aid file.

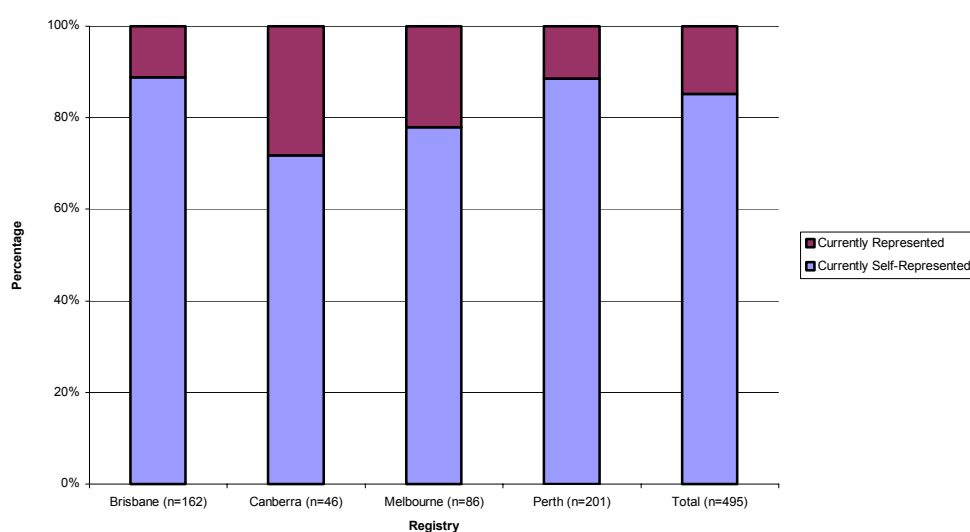
²⁷ This litigant was interviewed in the Canberra registry, however they had applied for Legal Aid in the Queenbeyan office of Legal Aid, NSW and therefore the file was unable to be obtained.

3. Overall Responses

In total, 495 litigants were interviewed. Of these, 422 litigants (85.3%) were self-represented on the day interviewed, whilst 73 litigants (14.7%) were represented on the day interviewed, but had been self-represented at some time previously in the Family Court.

There were significant differences observed between the registries in relation to the type of litigant interviewed.²⁸ In particular, a higher proportion of currently represented litigants were interviewed in the Canberra and Melbourne registries, than in the Brisbane and Perth registries. (See Appendix One: Table 1)

GRAPH 1: Registry by Representation



Of the 495 litigants interviewed, 238 (48.1%) said they had applied for legal aid, and 100 of these (42.0%) gave us permission to look at their Legal Aid file.²⁹ There were significant differences in the permission rate by Registry.³⁰ In particular, litigants in the Perth registry were far less likely to give permission to view their file, while litigants from the Canberra and Melbourne registries were more likely to give permission. (See Appendix One: Table 2)

²⁸ Registry by Representation: $\chi^2=13.822$, $df=3$, $n=495$, $p=0.003$

²⁹ 17 others gave permission to view their legal aid file even though they did not say they had applied for legal aid.

³⁰ Registry by Permission: $\chi^2=31.836$, $df=3$, $n=238$, $p=0.000$

4. Respondent Characteristics

This section provides a summary of litigant characteristics, including sex, Aboriginal or Torres Straight Islander descent, age, income, assets, education, employment status, occupation, reliance on government benefits, residence, ethnicity and language spoken at home, together with the issues involved in their case.

4.1 Sex

Overall, 49.2% of the litigants interviewed were female, and 50.8% were male, with no differences by current representation status or Registry (see Appendix One: Table 3). Similarly, there was no difference by sex between those who did and did not give permission for us to view their legal aid file (see Appendix One: Table 4)

4.2 Aboriginal or Torres Straight Islander descent

Only 12 of the litigants interviewed identified themselves as being of Aboriginal or Torres Straight Islander descent. All of these were self-represented on the day of the interview. Five were from Brisbane, five from Perth, one from Melbourne, and one from Canberra (see Appendix One: Table 5). Four gave us permission to view their legal aid file.

4.3 Ethnicity

27.2% of litigants were born outside Australia. There was no difference in place of birth by Registry, current representation status or permission/non-permission, although a slightly smaller proportion of currently represented litigants (18.1%) than of currently self-representing litigants (28.8%) were born outside Australia (see Appendix One: Table 6).

Just under half of those born outside Australia were born in non-English speaking countries. There was no difference in language background by current representation status or permission/non-permission, but litigants in Melbourne and Canberra were more likely to have been born in a non-English speaking country than those in Perth and Brisbane³¹ (see Appendix One: Table 7).

4.4 Language other than English

8.9% of litigants spoke a language other than English at home. There was no difference by current representation status or permission/non-permission status but again, more litigants in Melbourne and Canberra spoke a language other than English compared to litigants in Brisbane and Perth (see Appendix One: Table 8).

4.5 Age

The largest group of litigants interviewed was aged 30-39 years (46.3%), followed by those aged 40-49 years (29.3%) and those aged 20-29 years (16.5%). Eight litigants were aged over 60 years, while two were aged under 20 years (see Appendix One: Table 9). There were no differences in age by current representation, Registry or permission/non-permission. However, all of the litigants aged under 20 and over 60 were currently self-represented.

³¹ Registry by Non-English background: $\chi^2=13.864$, $df=3$, $n=131$, $p=0.003$

4.6 Residence

Litigants were asked to provide the postcode of the suburb or town in which they currently lived, and the postcode data was then aggregated according to whether the litigant lived in a metropolitan or regional area (based on standard Australia Post definitions of Regional and Metropolitan areas).

Overall, 64.8% of litigants interviewed lived in a metropolitan area and 35.2% lived in a regional area. There were no differences in location by representation status or permission/non-permission, but there was a significant difference by Registry.³² In particular, litigants interviewed in the Brisbane registry were more likely to reside in a regional area (51.3%), while litigants interviewed in the Perth registry were most likely to reside in a metropolitan area (87.9%) (see Appendix One: Table 10). Further while all litigants in the Melbourne Registry lived in Victoria, and only a couple of litigants in the Brisbane and Perth Registries lived outside Queensland or Western Australia, around half of the litigants in the Canberra Registry resided outside the ACT (in other parts of NSW).

4.7 Education

Around half of the litigants (54.5%) were educated up to the end of secondary school, while the other half (45.5%) were educated beyond secondary school. There were no significant differences in education levels by permission/non-permission, Registry or representation status. However, all of the eight litigants who had only a primary school education and the three who claimed to have no formal schooling were currently self-represented, and all were from Brisbane or Perth.

4.8 Employment Status

Half of the litigants (50.4%) said they currently did not have paid work. There was no difference in employment status by Registry or permission/non-permission, but there was a statistically significant difference by representation status.³³ Litigants who were currently represented were less likely to be in paid work (38.9%), while litigants who were currently self-represented (51.4%) were more likely to have paid work (see Appendix One: Table 11). This suggests an association between lack of paid work and (legally aided) representation, and between paid work, inability to obtain legal aid due to the means test, and self-representation.

4.9 Occupation

Litigants in paid work were asked to specify their current occupation, and the responses were classified into the Australian Standard Classification of Occupations (ASCO). The following table summarises the occupations of the 240 litigants for whom an occupation was specified.

³² Registry by Location: $\chi^2=65.149$, $df=3$, $n=478$, $p=0.000$

³³ Representation by Employment Status: $\chi^2=3.869$, $df=1$, $n=488$, $p=0.049$

Occupation	Frequency	%
Manager or Administrator	33	13.8
Professional or Associate Professional	55	22.9
Tradesperson, or Advanced Clerical/Service worker	40	16.7
Intermediate Clerical/Sales/Service, Production/Transport worker	56	23.3
Elementary Clerical/Sales/Service or Labourer/related worker	56	23.3
Total	240	100.0

Due to the small total and large number of categories for occupation, it was difficult to perform adequate statistical tests on this data, but overall there were no apparent differences in occupation by Registry, representation status or permission/non-permission.

4.10 Government Benefits

59.4% of litigants stated that they were in receipt of some type of government benefits. The main benefits noted were the Sole parent pension (32.4%), Family Allowance (25.2%), and Newstart (17.2%).³⁴ There were no differences in the receipt of government benefits by Registry or permission/non-permission, but again there was a significant difference by representation status,³⁵ with considerably more currently represented litigants (70.8%) than currently self-represented litigants (57.4%) in receipt of government benefits (see Appendix One: Tables 12-12D).

4.11 After-tax Income

Litigants were asked to categorise their after tax income into one of a number of bands. Combining the bands into three, 67.3% of litigants earned less than \$25,000 per year after tax, 19.5% earned between \$25,000 and \$39,999 per year after tax, and the remaining 13.2% earned \$40,000 or more per year after tax.

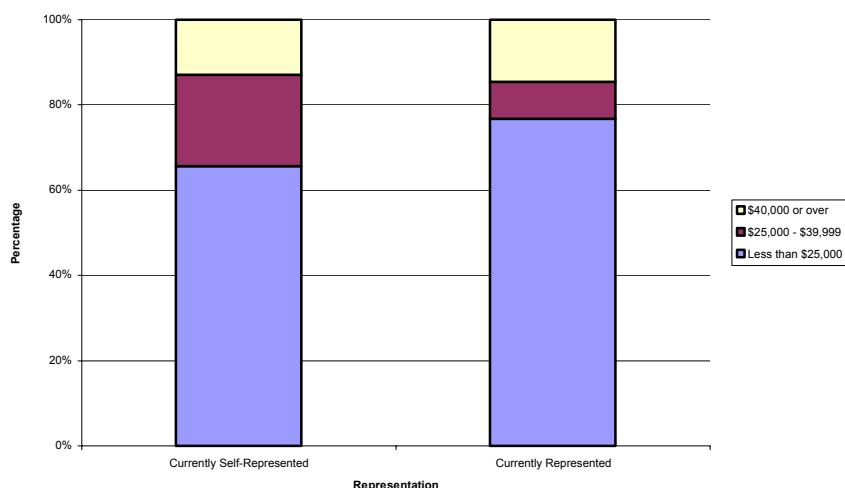
Although it was not a statistically significant difference, there was a trend towards litigants from the Canberra registry being more likely than those in other Registries to earn \$40,000 or more per year after tax. Otherwise there were no major differences between the Registries (see Appendix One: Table 13).

There was a significant difference in income levels by current representation status.³⁶ Currently self-represented litigants were less likely than currently represented litigants to earn less than \$25,000 per year after tax, and considerably more likely than currently represented litigants to earn between \$25,000 and \$39,999 per year after tax (see Appendix One: Table 14). This pattern did not vary significantly by Registry.

³⁴ Note: the government benefits noted are not independent, as some litigants may receive more than one type of government benefit.

³⁵ Representation by Government Benefits: $\chi^2=4.558$, $df=1$, $n=488$, $p=0.033$

³⁶ Representation by Income: $\chi^2=6.055$, $df=2$, $n=471$, $p=0.048$



This pattern suggests a cross-over point between representation and self-representation in the \$25,000-\$39,999 after tax income bracket. Those earning less than \$25,000 after tax are more likely to qualify for legal aid and therefore more likely to be represented, while those earning more than \$40,000 after tax are more likely to be able to afford their own representation. In between are those who do not qualify for legal aid but cannot afford to pay for their own lawyer. This observation is relevant to the fourth research question (the level at which the means test is set), and will be explored further below.

Of the litigants who had applied for legal aid, there was no significant difference in income levels by permission/non-permission to view their legal aid file.

4.12 Assets

Just over half of the litigants (54.1%) stated that they owned no property. For the other half (45.9%), the following table summarises the types of assets held.³⁷

Asset Type	Frequency	%
House	173	78.3
Land	80	36.2
Shares	39	17.6
Other investments	12	5.4
Business	38	17.2
Farm	4	1.8
Money in a bank account	56	25.3
Other	17	7.7

‘Other’ assets included such things as cars, caravans and boats.

There was no difference in property ownership by representation status or permission/non-permission, however, property ownership did differ significantly between Registries.³⁸ In particular, litigants from the Brisbane registry were far less

³⁷ The sum of the percentages is > 100 as some litigants owned more than one type of property.

³⁸ Registry by Property Ownership: $\chi^2=17.450$, $df=3$, $n=481$, $p=0.001$

likely to own property than litigants in the other three Registries (see Appendix One: Table 15).

4.13 Issues involved in their case

The most frequently cited issues were contact, residence, and recovery/enforcement/contravention of court orders. The following table displays the range of issues involved in the cases considered.³⁹

Issues involved in case	Frequency Percent	
Your or your ex-partner's contact with your children?	365	73.7
Who your children should live with? residence	244	49.3
Dividing up the property between you and your ex-partner?	98	19.8
Spousal maintenance for yourself or your ex-partner?	82	16.6
You or your ex-partner wanting to relocate within Australia or overseas?	50	10.1
Alleged child abuse ?	98	19.8
Alleged domestic violence by you or your ex-partner?	79	16.0
Recovery, enforcement or contravention of court orders	163	32.9
Other issue(s)	65	13.1

The 65 'other issues' included child maintenance (23 cases), and a variety of specific issues such as travel, paternity testing, and name changes.

Contact issues were significantly less likely to be involved in Canberra than in the other Registries.⁴⁰ Property, relocation, child abuse, domestic violence, spousal maintenance and other issues were significantly underrepresented in the Brisbane Registry and significantly over-represented in the Perth Registry. Canberra was also low on child abuse and spousal maintenance, while Melbourne was high on spousal maintenance and other issues.⁴¹ (See Appendix One: Table 16)

There were also significant differences by current representation status. Litigants who were currently represented were more likely to cite issues of contact, residence, child abuse, and enforcement, and less likely to cite 'other' issues, than were litigants who were currently self-represented.⁴² (See Appendix One: Table 17)

4.14 Prior Self-Representation

Litigants who were currently represented were asked for what part or parts of the proceedings they had represented themselves. The following table summarises their responses.

³⁹ Note that the total does not equate to 100% across all issues, as some matters involved multiple issues.

⁴⁰ Registry by Contact: $\chi^2=77.543$, $df=3$, $n=495$, $p=0.000$.

⁴¹ Registry by Property: $\chi^2=13.895$, $df=3$, $n=495$, $p=0.000$. Registry by Relocation: $\chi^2=15.459$, $df=3$, $n=495$, $p=0.001$. Registry by Child Abuse: $\chi^2=14.321$, $df=3$, $n=495$, $p=0.002$; Registry by Domestic Violence: $\chi^2=32.591$, $df=3$, $n=495$, $p=0.000$. Registry by Spousal Maintenance: $\chi^2=38.245$, $df=3$, $n=495$, $p=0.000$. Registry by Other issues: $\chi^2=10.137$, $df=3$, $n=495$, $p=0.017$.

⁴² Representation by Contact: $\chi^2=4.268$, $df=1$, $n=495$, $p=0.039$. Representation by Residence: $\chi^2=7.801$, $df=1$, $n=495$, $p=0.005$. Representation by Child Abuse: $\chi^2=7.393$, $df=1$, $n=495$, $p=0.007$. Representation by Enforcement: $\chi^2=4.612$, $df=1$, $n=495$, $p=0.032$. Representation by Other Issues: $\chi^2=4.395$, $df=1$, $n=495$, $p=0.036$.

Prior Self-Representation for	Frequency	%
Initial Work	17	23.3
Filing documents	3	4.1
Process other than court hearing	23	31.5
Adjournment	3	4.1
Court Appearance	7	9.6
Multiple court appearances	6	8.2
All parts	6	8.2

It can be seen that the majority of those who had represented themselves at some stage had done so for work prior to or apart from court appearances, suggesting that they had obtained a lawyer (either via legal aid or otherwise) when representation in court became necessary. A few had represented themselves for a single court appearance ('adjournment' and 'court appearance'), which may have occurred either before they obtained legal representation, or while they were otherwise represented. A few more had handled a substantial part of their case on their own, including court appearances, before obtaining the services of a lawyer.

5. Research Questions

5.1 Application for Legal Aid

5.1.1 What proportion of self-representing litigants had applied for legal aid?

The first research question we sought to address was what proportion of self-represented litigants in the Family Court have applied for legal aid? Litigants who were self-represented on the day interviewed were asked whether they had applied for legal aid for their current Family Court proceedings, while litigants who were currently represented but had been previously self-represented were asked whether they now had a grant of legal aid, and were also asked why they had previously represented themselves, including whether they had applied for legal aid.

Overall, we found that only 48.1% of litigants had applied for legal aid, resulting in a slight majority (51.9%) who had not applied for legal aid.⁴³ A significantly higher proportion of currently represented (67.1%) than of currently self-represented litigants (44.8%) had applied for legal aid (see Appendix One: Table 18).⁴⁴

There was also a statistically significant difference between Registries.⁴⁵ A clear majority of litigants from the Brisbane registry (64.2%) had applied for Legal Aid, whilst litigants from the Melbourne and Perth registries were considerably less likely to have applied for Legal Aid (37.2% and 38.3% respectively). (See Appendix One: Table 19). The same pattern held true for both currently self-represented and currently represented litigants.

5.1.2 Why had self-represented litigants not applied for Legal Aid?

Current SRLs who had not applied for legal aid for their current proceedings were asked why they had not applied. Currently represented litigants who had been self-represented in the past were asked why they represented themselves, and those who answered that they did not think they could get legal aid were also asked why they thought that.

The following table summarises the reasons given by the litigants (n=257) who had not applied for legal aid.⁴⁶

⁴³ This is consistent with Dewar *et al*'s finding that of the 49 currently self-represented litigants they interviewed, only 16 had applied for legal aid.: above, n 19, 25.

⁴⁴ Representation by Application for Legal Aid: $\chi^2=12.438$, $df=1$, $n=495$, $p=0.000$.

⁴⁵ Registry by Application for Legal Aid: $\chi^2=29.341$, $df=3$, $n=495$, $p=0.000$.

⁴⁶ Note that the percentages do not total to 100% as litigants could give numerous reasons for not applying for legal aid.

Reason why they had not applied for Legal Aid	N	%
Didn't think they were eligible for Legal Aid or thought they would be unsuccessful	86	33.5
Preferred to represent themselves	74	28.8
Told not eligible for Legal Aid or application would be unsuccessful	60	23.3
Didn't want to accept Legal Aid conditions (ie. contribution or charge)	8	3.1
Couldn't get Legal Aid for this type of case	9	3.5
Thought they'd reached the Legal Aid cap	3	1.2
Other reason why they didn't apply for Legal Aid?	58	22.6

SRLs in the Canberra Registry were significantly more likely than those in other Registries to think that they were ineligible for Legal Aid or that an application would be unsuccessful (see Appendix One: Table 20).⁴⁷

By far the most common reason why litigants did not think they were eligible for legal aid, or thought an application would be unsuccessful, was that they knew or assumed that they fell outside the means test – either because their income was too high (n=45), they had too many assets (n=20) or their partner's income was too high (n=6). Only 10 litigants cited a reason for thinking they were not eligible that did not relate to the means test. Some of those who did not think they were eligible (because of the means test or for other reasons) said that their view was based on a previous experience of being rejected for legal aid (n=13), although the majority did not refer to previous experience.

Similarly, a substantial proportion of those who had been told they were not eligible for legal aid, or that an application would be unsuccessful, had been told that their income and/or assets were too high to satisfy the means test (n=37). In this instance, however, litigants also cited a number of other reasons they had been given as to why they would not be eligible for legal aid (n=18). The most frequently cited source of information as to eligibility was Legal Aid itself – either as a result of a recent enquiry (n=34), or previous experience (n=5). A few respondents said they had been told they were not eligible for legal aid by their solicitor (n=6).

Just over one quarter of litigants who had not applied for legal aid said that they had not done so because they preferred to represent themselves. Even for some of these litigants, however, legal aid was implicated in their decision to self-represent, with litigants citing a previous bad experience with legal aid (n=6) or a generally dim view of legal aid (n=3) as their reason for preferring to represent themselves.

The 'other' reasons given by litigants for not applying for legal aid were quite varied, as shown in the following table. Nevertheless, the major 'other' reason was related to the timing of the legal aid application.

⁴⁷ Registry by Q4.4 and Q4.5 combined: $\chi^2=11.415$, $df=3$, $n=233$, $p=0.010$

Reason why they had not applied for Legal Aid	N	%
Not yet had time to apply but intend to do so	23	39.7
Not yet reached the stage where they feel they need a lawyer but may/will apply for legal aid then	7	12.1
Application process too long and complicated	5	8.6
Lawyer/s consulted did not advise to apply for legal aid, or advised to represent self	5	8.6
Unaware of availability of legal aid	4	6.9
Too difficult to access Legal Aid office	3	5.2
Previous negative experience with Legal Aid office	3	5.2
Not yet obtained legal advice or assistance	3	5.2
Thought a legal aid lawyer would not be as good	3	5.2

The highest proportion of litigants who said that had not yet had time to apply were in the Melbourne Registry, suggesting that the fact that these litigants were surveyed just after the Christmas-New Year break was indeed relevant. The litigants who said the process of applying for legal aid was too long and complicated and those who said that it was too difficult to access the Legal Aid office were all in Brisbane or Perth.

5.1.3 Conclusion

The data shows that only around half of self-representing litigants had applied for legal aid. Of those who had not applied for legal aid, only one quarter preferred to represent themselves for reasons unrelated to legal aid. The remaining three quarters had not applied for legal aid for reasons related to primarily to the means test, but also for a range of other legal-aid related reasons. A substantial proportion of these litigants had had contact with a legal aid office, either through previous experience of a legal aid application, or via a recent enquiry as to their eligibility for legal aid.

Self-representing litigants who had not applied for legal aid included a number who intended but had not yet had time to apply for legal aid. They had thus been compelled to attend at court at least once and sometimes on several occasions before they could complete a legal aid application. This reason was particularly evident in the Melbourne Registry after the Christmas-New Year break, although several litigants in the Perth Registry, who were interviewed a number of weeks later, also cited this factor.

5.2 Outcome of Application for Legal Aid

The second research question asked on what basis self-representing litigants who had applied for legal aid had been unsuccessful.

5.2.1 Application for legal aid successful

The research question assumes, initially, that self-representing litigants had in fact been unsuccessful in their legal aid applications, which was not always the case. In

fact, 29.6% of currently self-represented litigants had received legal aid. Not surprisingly, a higher proportion of litigants who were currently represented but had been self-representing in the past (77.6%) had also received a grant of aid. There was no significant difference between Registries in this regard (see Appendix One: Table 21 and 22).

The current SRLs who had received legal aid were asked why they did not have a lawyer representing them on the day of the interview. Their responses are set out in the following table:⁴⁸

Reason why they did not have representation	N	%
Grant of legal aid terminated or not extended	25	44.6
Decided they didn't want legal representation	11	19.6
Refused aid for this particular hearing	8	14.3
Conserving limited legal aid funds	5	8.9
A one-off appearance on their own	5	8.9
Awaiting appointment of (new) lawyer	5	8.9
Lawyer unavailable	3	5.4

Thus while in around half of the cases the SRL had been unsuccessful in obtaining legal aid for the stage of the proceedings they had now reached,⁴⁹ in the other half the SRL still had a legal aid grant but was appearing on their own because they were conserving legal aid funds or they did not have lawyer available, or they had decided they preferred to represent themselves.

Of the litigants who gave us permission to view their legal aid file, just over one third had had the aid that they requested granted in full (33.3% of current SRLs and 48% of currently represented litigants, n=40).

In some of these cases (n=9), however, aid was requested and granted for advice, investigation and negotiation, assistance with documents, or ADR conference, rather than for representation in court proceedings.⁵⁰ In a further 13 cases, the aid granted to the litigant had been terminated or not extended, on the basis of merits (6), means (3), or reaching the legal aid cap (3) (in two of the cases the cap was extended, but only by \$1000 or \$1100).

The patterns emerging from the litigant surveys and the legal aid files, therefore, are quite similar: in around half of the cases in which legal aid was granted, the SRL still had a legal aid grant but was appearing alone for some reason, while in the other half the legal aid grant did not extend to the stage of proceedings the litigant had reached.

⁴⁸ Sum of percentages is > 100 as litigants may have given more than one reason for being self-represented on the day.

⁴⁹ The reasons why legal aid was terminated or not extended included: reached legal aid cap (6), aid granted for conference/negotiations/assistance with documents only (5), merits (3), and means (2).

⁵⁰ In the 14 cases in total in which aid was granted for an initial ADR conference, the litigant received no further funding in 5, was funded to court in 4, a decision on further funding was pending in 3, and no recommendation was made in 2.

5.2.2 What aid had self-representing litigants applied for?

The Legal Aid Commissions were asked to specify what aid the litigant had applied for in their most recent legal aid application, but the responses are not comparable since each Commission divides matters into different stages (or uses different terminology for similar stages), and provides aid for different varieties of proceedings. In addition, while most responses referred to procedural stages, some also or only referred to the substantive issues involved. Leaving the substantive issues aside, the following table sets out the matters for which litigants had applied for legal aid.⁵¹

Legal Aid Application		Brisbane	Canberra	Melbourne	Perth
ADR conference	N	7			3
	%	15.5			15.0
initiate/respond to proceedings	N			18	2
	%			62.1	10.0
interim hearing	N	29	6		
	%	64.4	26.1		
directions hearing	N	1	1	2	2
	%	2.2	4.3	6.9	10.0
conciliation conference	N				2
	%				10.0
pre-hearing conference	N	1		8	
	%	2.2		27.6	
preparation for trial	N			2	
	%			6.9	
trial/final hearing	N	4	4	3	1
	%	8.9	17.4	10.3	5.0
general court proceedings	N	1		2	4
	%	2.2		6.9	20.0
contravention/enforcement/recovery order	N	5	1	4	1
	%	11.1	4.3	13.8	5.0
variation orders	N	2		2	
	%	4.4		6.9	
settlement orders	N		2	3	
	%		8.7	10.3	
appeal	N			1	
	%			3.4	
other	N				4
	%				20.0
Total	N	45	23	29	20

From this table, there does not appear to be any particular pattern of legal aid applications by SRLs (for example for enforcement proceedings, final hearings, or variation of orders). Rather, the applications to each Commission broadly reflect the way grants are constructed by that Commission.

⁵¹ Sum for each Registry is > 100% as litigants may have applied for aid for more than one stage.

5.2.3 Application for legal aid unsuccessful

133 currently self-representing litigants (70.4% of those who had applied for legal aid) had applied unsuccessfully. The following table summarises the reasons they gave as to why their legal aid application had been unsuccessful.

Reason why application for Legal Aid was unsuccessful	N	%
Own or associated person's income or assets too high [Means Test]	34	25.6
Case did not have good prospects of success [Merits Test]	32	24.1
Couldn't get legal aid for this type of case [Guidelines]	28	21.1
No further Legal Aid funding was available	6	4.5
Other reason	39	29.3

Current SRLs in the Melbourne Registry were more likely than those in other Registries to say they had been unsuccessful on the basis of means (see Appendix One: Table 23). Conversely, none of the Melbourne litigants said they had been unsuccessful on the basis of merits or guidelines, while Brisbane litigants were more likely than others to cite merits as the reason for rejection of their legal aid application (see Appendix One: Table 24).

'Other' reasons for rejection were over-represented in Perth (see Appendix One: Table 25). These reasons included:

'Other' reason why application for Legal Aid was unsuccessful	N	%	LACs
Still awaiting decision	9	23.1	all
Don't know/can't remember	6	15.4	all
Insufficient information provided	6	15.4	Q, WA
Conflict of interest	4	10.3	Q, WA
Other party has legal aid, can't fund both	3	7.7	Q, WA

Twenty-three currently represented litigants said that they had applied unsuccessfully for legal aid. The reasons they gave for their application being unsuccessful are set out in the following table:

Reason why application for Legal Aid was unsuccessful	N	%
Own or associated person's income or assets too high [Means Test]	10	43.5%
Case did not have good prospects of success [Merits Test]	5	21.7%
Couldn't get legal aid for this type of case [Guidelines]	4	17.4%
No further Legal Aid funding was available	2	8.7%
Other reason	4	17.4%

The various reasons for rejection were spread among the Legal Aid Commissions, although all but one of the merits cases and both of the ‘no further funding available’ cases occurred in Brisbane (see Appendix One: Tables 26-30).

For the 109 litigants who granted permission to view their legal aid files and who had actually made a formal application to Legal Aid, the following table summarises the ultimate outcome of the application.

Outcome of the application	Frequency	Percent
Wholly unsuccessful	46	42.2
Some aid granted but not all or type requested	15	13.8
Aid requested was granted	40	36.7
Decision still pending	6	5.5
Application withdrawn	2	1.8
Total	109	100.0

Although the numbers in each category were small when broken down by Registry, there was a clear pattern of applications in Brisbane being wholly unsuccessful, applications in Melbourne being wholly successful, and applications in Canberra and Perth being partially granted (see Appendix One: Table 31).

The following table summarises the reasons for rejection in the 46 cases in which the application was wholly unsuccessful.

Why application was rejected	Frequency	Percent
Failed to satisfy the Means test	11	23.9
Failed to satisfy the Merits test	23	50.0
Outside Commonwealth Guidelines	11	23.9
Reached funding cap	3	6.5
Other reasons	5	10.9

The parts of the guidelines involved varied widely, including property (settlement, value too high, personal property rather than matrimonial home), parties separated for less than 6 weeks, not within priorities (e.g. departure orders, variation of orders), no substantial dispute, no reasons provided for denying contact.

Again, the numbers in each category were small when broken down by Registry, however it appeared that the merits test was more likely to be the reason for rejection in Brisbane than in other Registries (see Appendix One: Table 32).

5.2.4 Application for legal aid partially successful

As noted above, there were 15 cases in the legal aid files analysed in which some aid was granted, but not all of the aid or the type of aid that had been requested. In these cases, Legal Aid Commissions were asked to specify why the aid provided differed from what was requested, and to summarise the main differences between the aid requested and that provided. The results are set out in the following table. There was no discernible pattern of difference between Registries.

Why aid differed from that requested	Frequency	Nature of difference
Merits	7	application granted in part; requested residence, approved contact only; aid for negotiation/conference only, not court
Means	2	aid terminated
Guidelines	2	application granted in part; aid not extended to trial
Reached funding cap	2	granted conference rather than court; aid not extended to trial
Withdrawn/settled	2	granted conference rather than court and matter settled; client consented to orders, withdrew application

5.2.4 Conclusions

In determining the reasons why self-represented litigants who had applied for legal aid had been unsuccessful, we looked at data from two different sources – the litigants themselves, and their legal aid files. Clearly, the legal aid files provide objective reasons for rejection. Since we did not obtain permission to check the legal aid files of all survey respondents who had applied for legal aid, however, the number of unsuccessful applications in the legal aid file sample was relatively small. On the other hand, the litigants’ own perceptions and recollections might be expected to be less reliable, but we did obtain a much larger number of litigant responses.

The litigant survey data suggests that of those self-representing litigants who had applied for legal aid, around one third had received a grant of aid, while two thirds had been unsuccessful in their legal aid application. The data from the Legal Aid Commission files suggests a higher success rate for SRLs of around 50% (that is, applications that were wholly or partially successful). Either way, however, a substantial proportion of SRLs had applied unsuccessfully for legal aid.

The two data sources yielded quite similar proportions of major reasons for rejection, that is, 25% Means, 25% Guidelines, 5% Funding Cap, and 15-20% ‘other’ reasons. The main difference between the data sources related to the merits test, which was stated to be the reason why their legal aid application was unsuccessful by only 25% of litigants, but was stated by the Legal Aid Commissions to be a reason for rejection in 50% of cases. The question asked of litigants, however, referred only to the reasonable prospects of success limb of the merits test, so there might have been some underestimate of the influence of the merits test in the litigant surveys. On the other hand, in the legal aid file data, the application of the merits test was often cumulative with another reason for rejection. It would appear safe to conclude, then, that self-represented litigants were unsuccessful in their legal aid applications on the basis of the merits test in at least 30% of cases.

It was also clear that somewhere between one third and one half of those SRLs who had received a grant of legal aid had subsequently had the grant terminated or not extended, or the grant had not covered court proceedings in the first place. These

litigants were therefore self-representing not because their legal aid application had been unsuccessful, but because their access to legal aid funds had been exhausted.

Finally, there was a group of SRLs who may have had a current grant of aid, but were representing themselves on the day of the interview either because their lawyer had not yet been appointed or was unavailable, they were conserving funds, or they preferred to represent themselves.

There were evident differences between Registries in both relative success rates in legal aid applications, and the reasons why applications were unsuccessful. These differences appear to reflect the respective family law funding positions of the Legal Aid Commissions. In Brisbane, where demand for family law legal aid funding considerably exceeds the available supply, applicants were more likely to be unsuccessful, and applications were more likely to be rejected on the basis of merits. In Melbourne, where the reverse situation applies, applicants were more likely to be wholly successful, and applications were more likely to be rejected on the basis of means. In Canberra and Perth, which fall somewhere between, applications were more likely to be partially successful.

5.3 Merits Test Implications

The third research question asked us to determine: “If [SRLs] have been unsuccessful on the basis of merit, whether this is a funding related issue, i.e. because the merit test is being read narrowly due to funding constraints?” As noted in the previous section, at least 30% of SRLs who apply for legal aid are unsuccessful on the basis of merit.

5.3.1 Differences between Legal Aid Commissions

The preceding section suggests that the merits test is indeed being read narrowly due to funding constraints, by Legal Aid Queensland in particular. This issue can be taken further by determining whether there are any qualitative differences in the way the merits test is being applied between Legal Aid Commissions. For this purpose, we looked at the qualitative descriptions provided by the Legal Aid Commissions of the application of the merits test in the files that they reviewed.

In the cases in which a litigant had granted permission for their legal aid file to be viewed, and where the litigant’s application for legal aid was wholly or partially unsuccessful on the basis of merits, or their grant of aid had been terminated on the basis of merits, the Commissions were asked to specify the main reason why the litigant failed to satisfy the merits test. Since LAQ was the Commission most likely to reject applications on the basis of the merits test (in 72% of unsuccessful applications), and was also the only Commission in this sample of cases to terminate grants of aid on the basis of merits where an application had initially been successful, there were many more qualitative responses to analyse from LAQ than from the other Commissions.

Two further features of LAQ’s application of the merits test emerged from the qualitative analysis. First, while responses from the other Commissions tended to be confined to one aspect of the merits test, in the majority of LAQ cases, more than one

reason (usually two or three reasons) was given for rejecting the application, or limiting or terminating the grant, on the basis of merits.

Secondly, as a corollary of the number of merits-based rejections and the number of reasons given, there were some categories of reasons for rejection on the basis of merits in the legal aid file sample that were used exclusively by LAQ. All Commissions cited ‘no reasonable prospects of success’ most frequently. The second most frequently cited reason by both LAQ and the ACT Legal Aid Commission was ‘no substantial dispute’. But the following categories (in descending order) were cited only by LAQ:

- benefit did not justify expenditure of public funds
- aid is not granted to a custodial parent who is denying contact unless independent evidence is provided to show good reason for doing so
- contempt not of substance
- party refused to attend legal aid conference
- no immediate need for orders sought
- recent orders made on same subject matter (including 2 year rule for final hearing)
- aid is not available to a person who refuses to return children unless there is a reasonable cause not to return the children.

These categories may well be used by the other Commissions from time to time, but they are less commonly referred to than the standard ‘no reasonable prospects of success’. In the relatively small number of cases we gathered that involved rejection on the basis of merits, only LAQ had enough cases and cited enough reasons to include these particular grounds for rejection.

5.3.2 Differences between litigants

The Legal Aid file data did not reveal any difference in the application of the merits test to male or female applicants, or to applicants in or respondents to family law proceedings.

5.3.3 Differences over time

We also sought to address the question of variations in the reading of the merits test over time, by asking the Legal Aid Commissions to provide a timeline of highs and lows in family law funding availability across the time period of the applications they reviewed for us. The relevant time periods for each Commission were as follows:

Commission	Time Period
LAQ	March 1998 to January 2003
VLA	June 1995 to February 2003 (majority December 1999 to February 2003)
ACTLAC	November 2000 to February 2003
LACWA	March 2001 to January 2003

LAQ responded that there had been no significant ‘lows’ in funding over the relevant period. Family law approvals overall had increased from 65% in 1998/99 to 69% in

2000/01, and had remained stable at 69% since then. Approvals for litigation in the Family Court had increased from 13.0% of approvals in 1999/00 to 20.5% in 2001/02.

VLA responded that from June 1995 until June 1998 the Commission had been worried about Commonwealth funds and was applying the guidelines strictly. By 30 June 1998 the Commission had managed to achieve a Commonwealth surplus, and the Managing Director announced in the *Annual Report* that the application of the guidelines would be eased. As it turned out, however, the two applications in our sample made prior to June 1998 had both been granted, but had subsequently been terminated when they reached the \$10,000 cap.

The Legal Aid Commission of WA responded that it had experienced a family law legal aid funding crisis from late 1999-2000. However things were back to normal by 2001, so that between March 2001 and January 2003 it had been business as usual.

The ACT Legal Aid Commission simply stated that it had been worried at all times about funding and its ability to meet demand during the relevant period.

Thus, there was nothing in the experience of the Legal Aid Commissions over the periods from which files were examined to suggest that there might have been any fluctuation in the application of the merits test at particular times due to funding constraints.

5.3.4 Conclusions

Although, as it turned out, no changes in the application of the merits test over time were to be expected, the material in this section reinforces the point made in the previous section that there were differences in the application of the merits test between Legal Aid Commissions. LAQ's application of the merits test differed both quantitatively and qualitatively from that of the other Commissions. The legal aid file data suggests that LAQ applies the merits test both more extensively and with greater rigour than do the other Commissions. Given the particular funding shortfall experienced by LAQ in relation to family law applications, its reading of the merits test may be presumed to be attributable to funding constraints.

5.4 Means Test Implications

The next question we were asked to address was: "If [SRLs] have been unsuccessful on the basis of means but are unable to afford a private practitioner, is the means test set at a reasonable level? What would be the effect of a particular gap/margin in the means test?"

5.4.1 Those who did not apply for legal aid

As noted in section 5.2, approximately 25% of SRLs who applied for legal aid were unsuccessful on the basis of means. And as noted in section 5.1, the majority of litigants who said that they did not apply because they were told they were not eligible for legal aid, or did not think they were eligible for legal aid, explained that this was due to the means test:

Why did not apply for legal aid	Means-Related	Percent	Total
Told they were not eligible for legal aid	33	55.0	60
Didn't think they were eligible for legal aid	55	77.5	71
Didn't think application for legal aid would be successful	10	62.5	16

It is thus evident that the means test has a significant impact in deterring applications for legal aid, quite apart from its impact on those who apply.

This would not be surprising in the case of litigants with high incomes, however those stating that they had been discouraged from applying for legal aid on the basis of means in fact indicated a spread of after tax incomes. The largest group (n=31) had incomes of less than \$25,000 after tax. The majority of these (n=18) said they thought or had been told they had too many assets, but 13 thought or had been told that their incomes were too high to be eligible for legal aid. A further 13 who had been deterred on the basis of income had after tax incomes in the \$25,000-\$29,999 bracket, while 14 had after tax incomes in the \$30,000-\$39,999 bracket. Finally, 27 had after tax incomes over \$40,000.

The highest proportion of litigants who were told they were not eligible or did not think they were eligible for legal aid due to the means test occurred in Canberra (86%). In Melbourne and Brisbane, around three quarters of those who were told or did not think they were eligible for legal aid cited the means test as the reason, while in Perth, 51% of litigants who were told or did not think they would be eligible for legal aid cited the means test.

5.4.2 Those who did apply for legal aid

Currently self-representing litigants who applied for legal aid and who were unsuccessful on the basis of means (n=34) were asked whether they felt they could afford to pay for a lawyer themselves. Twenty-six (76%) said they could not afford to pay for a lawyer, and only six said they could afford a lawyer but did not want to pay for one. Of those who said they could not afford to pay for a lawyer, almost 70% earned under \$25,000 after tax, while almost 30% earned \$25,000-\$39,999. Only one earned over \$40,000.

Those who said they could not afford a lawyer gave a variety of reasons, however, not all of which can be directly aligned with the means test. For example while six litigants said their income was too low, the most commonly cited reason was that the litigant had had a lawyer in the past but had run out of money (or was now in considerable debt to that lawyer) (n=7). A further five litigants said they had no access to funds with which to pay a lawyer, because their funds were tied up in their house and/or business, or assets were not held in their name and the other party refused to release them. Three other litigants said they had too many other financial commitments to be able to afford a lawyer.

It should be noted, however, that of the 12 SRLs who gave permission to view their legal aid files, five who said they had been unsuccessful on the basis of means were

not in fact rejected on that basis, and five who were actually rejected or terminated on the basis of means did not give that as the reason for their lack of success.

Among the 12 litigants who were actually refused legal aid or had their legal aid grant terminated on the basis of the means test, three were rejected on the basis of their own income and one was rejected on the basis of their own and an associated person's income. Six were rejected or terminated on the basis of their own assets, and one was rejected on the basis of the assets of an associated person. The last litigant was refused aid because no verification of their income was provided.

Three of the four litigants rejected on the basis of income earned (either alone or in combination with an associated person) well above the relevant income threshold, however all three fell within the problematic \$25,000-\$29,999 after tax income category identified earlier, in which people appear more likely to represent themselves than to feel able to afford legal representation. The fourth litigant rejected on the basis of income earned only \$20 per week above the income threshold.

All of the litigants rejected on the basis of assets had incomes well below the income threshold. The assets in question varied widely, including home equity above the threshold, cash in the bank above the level of allowable assets, other real estate, and a lump sum payment.

5.4.3 Conclusion

The data available to respond to the fourth research question includes a small number of cases rejected on the basis of means in which we were able to access the legal aid file, SRLs' own accounts of rejection on the basis of the means test, which were not always reliable, and more extensive information from SRLs indicating that the means test was undeniably a major reason for not applying for legal aid. On the basis of this data, we may conclude that the means test is not set at a reasonable level, and can suggest three ways in which the means test could be adjusted in order to reduce the level of self-representation in the Family Court. These are:

1. take into account the question of whether the litigant has realistic access to assessable assets
2. take into account previous attempts to pay for private legal representation and existing debts to previous legal representatives
3. extend eligibility to include a higher proportion of clients earning less than \$30,000 after tax.⁵²

Since the data indicates that three of the four Registries experienced high rates of discouragement and/or rejection due to the means test, and that there was no difference between Registries in the proportions of SRLs earning above and below \$30,000 after tax, these adjustments should be generally applied.

⁵² The data indicates that those earning up to \$40,000 after tax find it difficult to pay for their own lawyer. In recognition that extending eligibility up to this income level may be unrealistic, however, we have suggested the extension of eligibility only to the lowest third of the after tax income bracket that appears to characterise SRLs.

5.5 Nature of Legal Aid Services provided

The last research question asked what proportion of self-represented litigants have had legal aid at some point, why they no longer have legal aid, and whether this is a funding related issue. This question has already been answered in section 5.2. However, in response to the request that the research also provide information on the needs of self-represented litigants, to assist in policy development for Commissions regarding provision of advice, minor assistance, and so forth, we looked at SRLs' access to legal aid and other services apart from representation.

5.5.1 Legal Aid Conferences

Although Legal Aid Queensland is not the only Legal Aid Commission that runs early intervention legal aid conferences, and requires most applicants to participate in a conference before being eligible for any other grant of aid, due to an error in the data collection we only asked currently self-representing litigants in the Brisbane Registry of the Family Court whether they had attended a conference organised by Legal Aid at the beginning of their case. Sixty per cent of SRLs said they had attended a legal aid conference, while 40% had not. Where those who had attended a conference had received legal aid for the conference, in most cases that aid had not been extended to court proceedings.

5.5.2 Other assistance from Legal Aid

Sixty per cent of litigants interviewed had received other assistance from Legal Aid in relation to their current Family Court proceedings. There was no difference between currently self-represented and currently represented litigants, and no significant difference between Registries (although currently represented litigants in Melbourne were least likely to have accessed other legal aid services) (see Appendix One: Tables 33 and 34)

The kinds of assistance received are set out in the following table. As with overall access to other services, there was no difference in the level of access to particular services between currently self-represented and currently represented litigants.

Legal Aid Service	Frequency	%
Attended a legal advice session at a legal aid office	104	36.6
Had an appointment with a legal aid lawyer	130	45.8
Received help from legal aid in completing a document or letter	90	31.7
Received advice over the telephone from legal aid	119	41.9
Received assistance from a legal aid duty lawyer at the court (Vic)	35	12.3
Attended legal aid's family law court advice service (WA)	10	3.5
Attended legal aid's unrepresented litigants program (Vic)	1	0.4
Obtained information from the Legal Aid Commission's website	29	10.2
Used a self-help kit produced by legal aid (Qld)	16	5.6
Received other assistance from legal aid	26	9.2

It can be seen that the most commonly accessed forms of assistance were an appointment with a legal aid lawyer, telephone advice, attendance at a legal advice session, and help in completing a document or letter. These forms of advice and

minor assistance were available from all of the Legal Aid Commissions, and are clearly of substantial benefit to litigants who are otherwise representing themselves.

On the other hand, information from the Legal Aid Commission's website was less well used by SRLs. This information may be less accessible as it relies on the availability of computers and knowledge of their use. Moreover, the information cannot be interrogated and is not tailored to the litigant's particular case, and so might not be as helpful as interactive assistance. The litigants who gave details of the information they had obtained from the Commission's website generally referred to basic information on legal aid applications and contact details of legal aid offices. Three litigants specifically stated that the information was not helpful or too generic. Almost half of the litigants who said they had used a website said they had used it to obtain forms and information on Family Court proceedings, suggesting that they may have been referring to the Family Court's website rather than to that of the Legal Aid Commission.

The duty lawyer scheme and the unrepresented litigants program were available only in Victoria. The duty lawyer scheme had been used by 68.6% of Victorian litigants interviewed, making this the single most heavily used legal aid service. On the other hand, only one of the 44 Victorian litigants had attended VLA's unrepresented litigants program. This is explained, however, by the fact that the program (a one day per month workshop with supporting pamphlets and information kits) did not run in December and January, so the litigants surveyed for the study had no realistic opportunity to access the program.

The family court advice service was available only in Western Australia, where it was accessed by 8.3% of the litigants interviewed in the Perth Registry. This service, which began in March 2002, operates in the Family Court on two mornings per week and provides information and advice to self-representing litigants, and also makes appointments for clients to attend a Legal Aid office and assists them to apply for legal aid.

Self-help kits were available only in Queensland, and were accessed by 15.1% of the litigants interviewed in the Brisbane Registry. The particular kits referred to were: child contact and residence (4), interim orders and final orders (3), recovery and relocation (1), financial statement/Form 17 (1), family law conference (1), minutes of consent orders (1), and variation of court orders (1). One litigant could not specify which kit had been used, while another said that some forms were provided but they could not understand them.

The other assistance listed by litigants was quite varied, including referrals to private lawyers, ADR, advice on domestic violence, assistance from child support unit, use of library and computer at Legal Aid office, and sending documents.

5.5.3 Community Legal Centres

Twenty-eight per cent of litigants interviewed said they had been referred by Legal Aid to a Community Legal Centre. We did not ask for any further details, such as the kind of assistance they had received from the CLC, or whether they had found the service provided helpful. However it is evident that as well as the forms of assistance

provided directly by Legal Aid Commissions, CLCs also play an important role in the network of support services for self-representing litigants.

5.5.4 Conclusion

The majority of SRLs had used other services provided by Legal Aid Commissions to assist them in conducting their cases. The most commonly used services were advice services (appointments with legal aid lawyers, telephone advice and advice sessions), and assistance with documents or letters. In Victoria, the Family Court duty lawyer service was also heavily patronised by SRLs. Referrals to Community Legal Centres were also made in a substantial minority of cases, and it can be assumed that CLCs are also being called upon to provide various forms of assistance to SRLs.

6. Conclusion

The data obtained from self-representing litigants and from legal aid files yielded the following distribution of experience among self-representing litigants in the Family Court. The proportions in each case are approximate, but provide a good indication of the range of options and the relative frequency of each one.

Did not apply for legal aid	50%	
Preferred to represent self		25%
Due to means test		40%
Other legal aid-related reason		25%
Intend to apply but haven't yet had time		10%
Applied for legal aid	50%	
Successful	33-50%	
limited/not extended/terminated		35%
appearing self-represented while funded by legal aid		25%
currently represented		40%
Unsuccessful	50-67%	
means		25%
merits		30%
guidelines		25%
funding cap		5%
other reason		15%

These results make it clear that there is an extensive relationship between the unavailability of legal aid and self-representation in the Family Court. That relationship is found not just in legal aid rejections or terminations, but also in non-applications for legal aid. They also show that in some cases, litigants may appear unrepresented even while holding a grant of legal aid.

The research sheds further light on the phenomenon of partial representation identified by Hunter *et al.* Three different forms of partial representation emerge. First, there is a group of litigants who, by choice or by necessity, commence their cases unrepresented, and then go on to apply for legal aid, in many cases successfully. Secondly, there is a group of litigants whose initial grant of aid is terminated or not extended, and who then go on to represent themselves. Thirdly, as just noted, there is a group of litigants who are currently legally aided and represented, but who make an occasional court appearance on their own for a variety of reasons.

The research examined the respective associations between the means test and the merits test and self-representation. The function of the means test is to restrict eligibility for legal aid to those who cannot afford to pay for their own legal representation. The data suggests, however, that the level at which the means test is currently set does not accurately reflect the level at which people can and cannot afford to pay for their own lawyer, but rather creates a group of people who are not eligible for legal aid but who are unable to afford private representation. These people become self-representing. This might occur because their income is below the threshold but their assets are above the threshold, even though they have no realistic access to those assets to pay for legal representation. Alternatively, it might occur

because their income is above the threshold, but their other financial commitments are such that payment for legal representation is not a realistic option. The data indicates that private legal representation only becomes affordable at an after-tax income level of around \$40,000.

In Brisbane, the fact that a higher proportion of self-representing litigants than in other States had applied for legal aid, and the fact that a higher proportion of those who applied for legal aid were rejected on the basis of merits, suggests that the means test filters out a lower proportion of applicants and prospective applicants in that State than in other States. This in turn suggests a particular shortage of funding relative to demand and 'objective' eligibility, which can only be mitigated by more extensive application of the merits test. While the level at which the means test is set affects litigants nationally, there appears to be an additional shortfall affecting Queensland litigants in particular, which is evidenced by the way in which the merits test is applied by LAQ.

Finally, given the impact of the means and merits tests, other non-means and merits-tested, non-representation services provided by Legal Aid Commissions prove to be an important source of assistance for self-representing litigants. Interactive services such as legal advice sessions, telephone or in person advice, assistance with documents and letters, and duty lawyers, were the most frequently used services. The research did not seek to investigate the effectiveness of or client satisfaction with these services. Nevertheless, it is clear that they perform an important role for those litigants who are otherwise ineligible for legal aid and are self-representing as a result.

Appendix One: Data Tables

TABLE ONE: Registry by Representation

Registry			Representation		Total
			Self-Represented	Represented	
Brisbane	Count		144	18	162
	% within Registry		88.9%	11.1%	100.0%
Canberra	Count		33	13	46
	% within Registry		71.7%	28.3%	100.0%
Melbourne	Count		67	19	86
	% within Registry		77.9%	22.1%	100.0%
Perth	Count		178	23	201
	% within Registry		88.6%	11.4%	100.0%
Total	Count		422	73	495
	% within Registry		85.3%	14.7%	100.0%

TABLE TWO: Registry by Permission to view Legal Aid file

Registry			Permission		Total
			No	Yes	
Brisbane	Count		63	41	104
	% within Registry		60.6%	39.4%	100.0%
Canberra	Count		4	21	25
	% within Registry		16.0%	84.0%	100.0%
Melbourne	Count		13	19	32
	% within Registry		40.6%	59.4%	100.0%
Perth	Count		58	19	77
	% within Registry		75.3%	24.7%	100.0%
Total	Count		138	100	238
	% within Registry		58.0%	42.0%	100.0%

TABLE THREE: Registry by Gender – split by Representation

Representation				Q18. Sex		Total	
				Female	Male		
Self-Represented	Registry	Brisbane	Count	77	67	144	
			% within Registry	53.5%	46.5%	100.0%	
		Canberra	Count	16	17	33	
			% within Registry	48.5%	51.5%	100.0%	
		Melbourne	Count	34	33	67	
			% within Registry	50.7%	49.3%	100.0%	
		Perth	Count	77	95	172	
			% within Registry	44.8%	55.2%	100.0%	
	Total		Count	204	212	416	
			% within Registry	49.0%	51.0%	100.0%	
	Represented	Registry	Brisbane	Count	10	8	18
				% within Registry	55.6%	44.4%	100.0%
		Canberra	Count	6	7	13	
			% within Registry	46.2%	53.8%	100.0%	
		Melbourne	Count	8	11	19	
			% within Registry	42.1%	57.9%	100.0%	
		Perth	Count	12	10	22	
			% within Registry	54.5%	45.5%	100.0%	
Total			Count	36	36	72	
			% within Registry	50.0%	50.0%	100.0%	

TABLE FOUR: Legal Aid Commission by Gender – split by Representation (Legal Aid Files)

Representation			Q2. Litigant is:		Total	
			Female	Male		
Self-Represented	Legal Aid Commission	LAQ	Count	20	19	39
			% within Legal Aid Commission	51.3%	48.7%	100.0%
	ACT LA	Count	11	5	16	
		% within Legal Aid Commission	68.8%	31.3%	100.0%	
	VIC LA	Count	11	9	20	
		% within Legal Aid Commission	55.0%	45.0%	100.0%	
	WA LA	Count	9	7	16	
		% within Legal Aid Commission	56.3%	43.8%	100.0%	
	Total	Count	51	40	91	
		% within Legal Aid Commission	56.0%	44.0%	100.0%	
Represented	Legal Aid Commission	LAQ	Count	4	2	6
			% within Legal Aid Commission	66.7%	33.3%	100.0%
	ACT LA	Count	3	3	6	
		% within Legal Aid Commission	50.0%	50.0%	100.0%	
	VIC LA	Count	2	7	9	
		% within Legal Aid Commission	22.2%	77.8%	100.0%	
	WA LA	Count	2	2	4	
		% within Legal Aid Commission	50.0%	50.0%	100.0%	
	Total	Count	11	14	25	
		% within Legal Aid Commission	44.0%	56.0%	100.0%	

TABLE FIVE: Registry by Aboriginal/Torres Strait Islander descent – self-represented litigants only

Representation			Q28. Are you of Aboriginal or Torres Strait Islander descent?		Total	
			No	Yes		
Self-Represented	Registry	Brisbane	Count	127	5	132
			% within Registry	96.2%	3.8%	100.0%
	Canberra	Count	25	1	26	
		% within Registry	96.2%	3.8%	100.0%	
	Melbourne	Count	66	1	67	
		% within Registry	98.5%	1.5%	100.0%	
	Perth	Count	163	5	168	
		% within Registry	97.0%	3.0%	100.0%	
	Total	Count	381	12	393	
		% within Registry	96.9%	3.1%	100.0%	

TABLE SIX: Representation by Country of Birth

Representation			Q24. Were you born in Australia?		Total
			No	Yes	
Self-Represented	Count		119	294	413
		% within Representation	28.8%	71.2%	100.0%
	Represented	Count	13	59	72
		% within Representation	18.1%	81.9%	100.0%
Total	Count	132	353	485	
	% within Representation	27.2%	72.8%	100.0%	

TABLE SEVEN: Registry by Country of Birth where born outside Australia

Registry			Country of birth		Total
			English-speaking	non-English speaking	
Brisbane	Count	25	14	39	
	% within Registry	64.1%	35.9%	100.0%	
Canberra	Count	3	9	12	
	% within Registry	25.0%	75.0%	100.0%	
Melbourne	Count	8	18	26	
	% within Registry	30.8%	69.2%	100.0%	
Perth	Count	35	19	54	
	% within Registry	64.8%	35.2%	100.0%	
Total	Count	71	60	131	
	% within Registry	54.2%	45.8%	100.0%	

TABLE EIGHT: Representation by Language other than English

		Q26. Do you speak a language other than English at home?			
		No	Yes	Total	
Registry	Brisbane	Count	152	10	162
		% within Registry	93.8%	6.2%	100.0%
	Canberra	Count	39	7	46
		% within Registry	84.8%	15.2%	100.0%
	Melbourne	Count	73	13	86
		% within Registry	84.9%	15.1%	100.0%
	Perth	Count	178	13	191
		% within Registry	93.2%	6.8%	100.0%
Total	Count	442	43	485	
	% within Registry	91.1%	8.9%	100.0%	

TABLE NINE: Registry by Age – split by representation

Representation			Registry				Total	
			Brisbane	Canberra	Melbourne	Perth		
Self-Represented	Q29. Are you aged:	under 20	Count	0	0	1	1	2
		% within Registry	.0%	.0%	1.5%	.6%	.5%	
	20-29	Count	26	2	8	32	68	
		% within Registry	18.1%	6.1%	11.9%	18.9%	16.5%	
	30-39	Count	70	15	30	78	193	
		% within Registry	48.6%	45.5%	44.8%	46.2%	46.7%	
	40-49	Count	38	11	25	46	120	
		% within Registry	26.4%	33.3%	37.3%	27.2%	29.1%	
	50-59	Count	5	5	2	10	22	
		% within Registry	3.5%	15.2%	3.0%	5.9%	5.3%	
	60-69	Count	5	0	1	2	8	
		% within Registry	3.5%	.0%	1.5%	1.2%	1.9%	
	Total	Count	144	33	67	169	413	
		% within Registry	100.0%	100.0%	100.0%	100.0%	100.0%	
Represented	Q29. Are you aged:	20-29	Count	3	1	2	6	12
		% within Registry	16.7%	7.7%	10.5%	28.6%	16.9%	
	30-39	Count	10	7	7	7	31	
		% within Registry	55.6%	53.8%	36.8%	33.3%	43.7%	
	40-49	Count	4	4	9	5	22	
		% within Registry	22.2%	30.8%	47.4%	23.8%	31.0%	
	50-59	Count	1	1	1	3	6	
		% within Registry	5.6%	7.7%	5.3%	14.3%	8.5%	
	Total	Count	18	13	19	21	71	
		% within Registry	100.0%	100.0%	100.0%	100.0%	100.0%	

TABLE TEN: Representation by Residence

		Regional or Metro		Total	
		Metro	Regional		
Registry	Brisbane	Count	78	82	160
		% within Registry	48.8%	51.3%	100.0%
	Canberra	Count	35	11	46
		% within Registry	76.1%	23.9%	100.0%
	Melbourne	Count	52	30	82
		% within Registry	63.4%	36.6%	100.0%
	Perth	Count	167	23	190
		% within Registry	87.9%	12.1%	100.0%
Total	Count		332	146	478
	% within Registry		69.5%	30.5%	100.0%

TABLE ELEVEN: Representation by Employment Status

		Q20. Do you currently have paid work?			
		No	Yes	Total	
Representation	Self-Represented	Count	202	214	416
		% within Representation	48.6%	51.4%	100.0%
	Represented	Count	44	28	72
		% within Representation	61.1%	38.9%	100.0%
Total	Count		246	242	488
	% within Representation		50.4%	49.6%	100.0%

TABLE TWELVE: Registry by Receipt of Government Benefits

		Q22. Do you receive any government benefits?			
		No	Yes	Total	
Registry	Brisbane	Count	69	93	162
		% within Registry	42.6%	57.4%	100.0%
	Canberra	Count	20	26	46
		% within Registry	43.5%	56.5%	100.0%
	Melbourne	Count	37	49	86
		% within Registry	43.0%	57.0%	100.0%
	Perth	Count	72	122	194
		% within Registry	37.1%	62.9%	100.0%
Total	Count		198	290	488
	% within Registry		40.6%	59.4%	100.0%

TABLE TWELVE A: Registry by Receipt of Family Allowance

			Received government benefits - family allowance		
			No	Yes	Total
Registry	Brisbane	Count	72	21	93
		% within Registry	77.4%	22.6%	100.0%
	Canberra	Count	20	6	26
		% within Registry	76.9%	23.1%	100.0%
	Melbourne	Count	33	16	49
		% within Registry	67.3%	32.7%	100.0%
	Perth	Count	92	30	122
		% within Registry	75.4%	24.6%	100.0%
Total	Count		217	73	290
	% within Registry		74.8%	25.2%	100.0%

TABLE TWELVE B: Registry by Sole Parent Pension

			Received government benefits - sole parent pension		
			No	Yes	Total
Registry	Brisbane	Count	66	27	93
		% within Registry	71.0%	29.0%	100.0%
	Canberra	Count	18	8	26
		% within Registry	69.2%	30.8%	100.0%
	Melbourne	Count	34	15	49
		% within Registry	69.4%	30.6%	100.0%
	Perth	Count	78	44	122
		% within Registry	63.9%	36.1%	100.0%
Total	Count		196	94	290
	% within Registry		67.6%	32.4%	100.0%

TABLE TWELVE C: Registry by Newstart Allowance

		Received government benefits - Newstart			
		No	Yes	Total	
Registry	Brisbane	Count	74	19	93
		% within Registry	79.6%	20.4%	100.0%
	Canberra	Count	22	4	26
		% within Registry	84.6%	15.4%	100.0%
	Melbourne	Count	41	8	49
		% within Registry	83.7%	16.3%	100.0%
	Perth	Count	103	19	122
		% within Registry	84.4%	15.6%	100.0%
Total		Count	240	50	290
		% within Registry	82.8%	17.2%	100.0%

TABLE TWELVE D: Representation by Receipt of Government Benefits

		Q22. Do you receive any government benefits?			
		No	Yes	Total	
Representation	Self-Represented	Count	177	239	416
		% within Representation	42.5%	57.5%	100.0%
	Represented	Count	21	51	72
		% within Representation	29.2%	70.8%	100.0%
Total		Count	198	290	488
		% within Representation	40.6%	59.4%	100.0%

TABLE THIRTEEN: Registry by Income

		Income (after tax)				
		Less than \$25,000	\$25,000 - \$39,999	\$40,000 or over	Total	
Registry	Brisbane	Count	117	28	16	161
		% within Registry	72.7%	17.4%	9.9%	100.0%
	Canberra	Count	30	5	10	45
		% within Registry	66.7%	11.1%	22.2%	100.0%
	Melbourne	Count	57	16	11	84
		% within Registry	67.9%	19.0%	13.1%	100.0%
	Perth	Count	113	43	25	181
		% within Registry	62.4%	23.8%	13.8%	100.0%
Total		Count	317	92	62	471
		% within Registry	67.3%	19.5%	13.2%	100.0%

TABLE FOURTEEN: Representation by Income

		Income (after tax)			Total	
		Less than \$25,000	\$25,000 - \$39,999	\$40,000 or over		
Representation	Self-Represented	Count	264	86	52	402
		% within Representation	65.7%	21.4%	12.9%	100.0%
	Represented	Count	53	6	10	69
		% within Representation	76.8%	8.7%	14.5%	100.0%
Total		Count	317	92	62	471
		% within Representation	67.3%	19.5%	13.2%	100.0%

TABLE FIFTEEN: Registry by Property Ownership

		Q31. Do you own any property?			
		No	Yes	Total	
Registry	Brisbane	Count	107	53	160
		% within Registry	66.9%	33.1%	100.0%
	Canberra	Count	19	26	45
		% within Registry	42.2%	57.8%	100.0%
	Melbourne	Count	38	48	86
		% within Registry	44.2%	55.8%	100.0%
	Perth	Count	96	94	190
		% within Registry	50.5%	49.5%	100.0%
Total		Count	260	221	481
		% within Registry	54.1%	45.9%	100.0%

TABLE SIXTEEN: Issues involved in case by Registry

Issues involved in case		Brisbane	Canberra	Melbourne	Perth	Total
1. your or your ex-partner's contact with your children?	N	127	9	66	163	365
	%	78.4	19.6	76.7	81.1	73.7
2. who your children should live with? residence	N	73	23	47	101	244
	%	45.1	50.0	54.7	50.2	49.3
3. dividing up the property between you and your ex-partner?	N	17	10	19	52	98
	%	10.5	21.7	22.1	25.9	19.8
4. spousal maintenance for yourself or your ex-partner?	N	8	2	26	46	82
	%	4.9	4.3	30.2	22.9	16.6
5. you or your ex-partner wanting to relocate within Australia or overseas?	N	6	3	9	32	50
	%	3.7	6.5	10.5	15.9	10.1
6. alleged child abuse ?	N	21	5	17	55	98
	%	13.0	10.9	19.8	27.4	19.8
7. alleged domestic violence by you or your ex-partner?	N	13	1	11	54	79
	%	8.0	2.2	12.8	26.9	16.0
8. recovery, enforcement or contravention of court orders	N	47	12	32	72	163
	%	29.0	26.1	37.2	35.8	32.9
9. other issue(s)	N	12	4	17	32	65
	%	7.4	8.7	19.8	15.9	13.1

TABLE SEVENTEEN: Issues involved in case by Representation Status

Issues involved in case		Self-Represented	Represented	Total
1. your or your ex-partner's contact with your children?	N	304	61	365
	%	72.0	83.6	73.7
2. who your children should live with? residence	N	197	47	244
	%	46.7	64.4	49.3
3. dividing up the property between you and your ex-partner?	N	82	16	98
	%	19.4	21.9	19.8
4. spousal maintenance for yourself or your ex-partner?	N	74	8	82
	%	17.5	11.0	16.6
5. you or your ex-partner wanting to relocate within Australia or overseas?	N	42	8	50
	%	10.0	11.0	10.1
6. alleged child abuse ?	N	75	23	98
	%	17.8	31.5	19.8
7. alleged domestic violence by you or your ex-partner?	N	64	15	79
	%	15.2	20.5	16.0
8. recovery, enforcement or contravention of court orders	N	131	32	163
	%	31.0	43.8	32.9
9. other issue(s)	N	61	4	65
	%	14.5	5.5	13.1

TABLE EIGHTEEN: Representation by Application for Legal Aid

Representation	Self-Represented	Count	said applied for LA		Total
			no	yes	
			233	189	422
		% within Representation	55.2%	44.8%	100.0%
	Represented	Count	24	49	73
		% within Representation	32.9%	67.1%	100.0%
Total		Count	257	238	495
		% within Representation	51.9%	48.1%	100.0%

TABLE NINETEEN: Registry by Application for Legal Aid

Registry	Brisbane	Count	said applied for LA		Total
			no	yes	
			58	104	162
		% within Registry	35.8%	64.2%	100.0%
	Canberra	Count	21	25	46
		% within Registry	45.7%	54.3%	100.0%
	Melbourne	Count	54	32	86
		% within Registry	62.8%	37.2%	100.0%
	Perth	Count	124	77	201
		% within Registry	61.7%	38.3%	100.0%
Total		Count	257	238	495
		% within Registry	51.9%	48.1%	100.0%

TABLE TWENTY: Registry by Reason for not applying for Legal Aid was that they thought they were not eligible for Legal Aid or that they would be unsuccessful in their application – self-represented litigants only

Registry	Brisbane	Count	Q4.4 and Q4.5 combined: Didn't think they were eligible for Legal Aid or they thought they would be unsuccessful		Total
			No	Yes	
			38	19	57
		% within Registry	66.7%	33.3%	100.0%
	Canberra	Count	4	11	15
		% within Registry	26.7%	73.3%	100.0%
	Melbourne	Count	33	13	46
		% within Registry	71.7%	28.3%	100.0%
	Perth	Count	79	36	115
		% within Registry	68.7%	31.3%	100.0%
Total		Count	154	79	233
		% within Registry	66.1%	33.9%	100.0%

TABLE TWENTY-ONE: Registry by Receipt of Legal Aid for current proceedings -self-represented litigants only

			Q5. Have you ever received legal aid for your current Family Court proceedings?		
			No	Yes	Total
Registry	Brisbane	Count	62	25	87
		% within Registry	71.3%	28.7%	100.0%
	Canberra	Count	15	3	18
		% within Registry	83.3%	16.7%	100.0%
	Melbourne	Count	11	10	21
		% within Registry	52.4%	47.6%	100.0%
	Perth	Count	45	18	63
		% within Registry	71.4%	28.6%	100.0%
Total		Count	133	56	189
		% within Registry	70.4%	29.6%	100.0%

TABLE TWENTY-TWO: Registry by Receipt of Legal Aid for current proceedings - represented litigants only

			RLs - applied for and received Legal Aid		
			No	Yes	Total
Registry	Brisbane	Count	4	13	17
		% within Registry	23.5%	76.5%	100.0%
	Canberra	Count	3	4	7
		% within Registry	42.9%	57.1%	100.0%
	Melbourne	Count	1	10	11
		% within Registry	9.1%	90.9%	100.0%
	Perth	Count	3	11	14
		% within Registry	21.4%	78.6%	100.0%
Total		Count	11	38	49
		% within Registry	22.4%	77.6%	100.0%

TABLE TWENTY-THREE: Registry by Legal Aid unsuccessful re Means - self-represented litigants only

		Q6. Legal Aid application not successful re Means			
			No	Yes	Total
Registry	Brisbane	Count	48	14	62
		% within Registry	77.4%	22.6%	100.0%
	Canberra	Count	11	4	15
		% within Registry	73.3%	26.7%	100.0%
	Melbourne	Count	3	8	11
		% within Registry	27.3%	72.7%	100.0%
	Perth	Count	37	8	45
		% within Registry	82.2%	17.8%	100.0%
Total		Count	99	34	133
		% within Registry	74.4%	25.6%	100.0%

TABLE TWENTY-FOUR: Registry by Legal Aid unsuccessful re Merits - self-represented litigants only

		5. case did not have good prospects of success			
			No	Yes	Total
Registry	Brisbane	Count	41	21	62
		% within Registry	66.1%	33.9%	100.0%
	Canberra	Count	11	4	15
		% within Registry	73.3%	26.7%	100.0%
	Melbourne	Count	11	0	11
		% within Registry	100.0%	.0%	100.0%
	Perth	Count	38	7	45
		% within Registry	84.4%	15.6%	100.0%
Total		Count	101	32	133
		% within Registry	75.9%	24.1%	100.0%

TABLE TWENTY-FIVE: Registry by Legal Aid unsuccessful re Other Reason - self-represented litigants only

			8. other reason		Total
			No	Yes	
Registry	Brisbane	Count	48	14	62
		% within Registry	77.4%	22.6%	100.0%
	Canberra	Count	14	1	15
		% within Registry	93.3%	6.7%	100.0%
	Melbourne	Count	9	2	11
		% within Registry	81.8%	18.2%	100.0%
	Perth	Count	23	22	45
		% within Registry	51.1%	48.9%	100.0%
Total	Count		94	39	133
	% within Registry		70.7%	29.3%	100.0%

TABLE TWENTY-SIX: Registry by Legal Aid unsuccessful re Means - represented litigants only

			Q14. Legal Aid application not successful re Means		Total
			No	Yes	
Registry	Brisbane	Count	7	3	10
		% within Registry	70.0%	30.0%	100.0%
	Canberra	Count	1	3	4
		% within Registry	25.0%	75.0%	100.0%
	Melbourne	Count	1	3	4
		% within Registry	25.0%	75.0%	100.0%
	Perth	Count	4	1	5
		% within Registry	80.0%	20.0%	100.0%
Total	Count		13	10	23
	% within Registry		56.5%	43.5%	100.0%

TABLE TWENTY-SEVEN: Registry by Legal Aid unsuccessful re Merits - represented litigants only

			5. case did not have good prospects of success		
			No	Yes	Total
Registry	Brisbane	Count	6	4	10
		% within Registry	60.0%	40.0%	100.0%
	Canberra	Count	4	0	4
		% within Registry	100.0%	.0%	100.0%
	Melbourne	Count	3	1	4
		% within Registry	75.0%	25.0%	100.0%
	Perth	Count	5	0	5
		% within Registry	100.0%	.0%	100.0%
Total	Count		18	5	23
	% within Registry		78.3%	21.7%	100.0%

TABLE TWENTY-EIGHT: Registry by Legal Aid unsuccessful re Guidelines - represented litigants only

			6. couldn't get legal aid for this type of case		
			No	Yes	Total
Registry	Brisbane	Count	9	1	10
		% within Registry	90.0%	10.0%	100.0%
	Canberra	Count	3	1	4
		% within Registry	75.0%	25.0%	100.0%
	Melbourne	Count	4	0	4
		% within Registry	100.0%	.0%	100.0%
	Perth	Count	3	2	5
		% within Registry	60.0%	40.0%	100.0%
Total	Count		19	4	23
	% within Registry		82.6%	17.4%	100.0%

TABLE TWENTY-NINE: Registry by Legal Aid unsuccessful re Cap - represented litigants only

			7. no further legal aid funding available		
			No	Yes	Total
Registry	Brisbane	Count	8	2	10
		% within Registry	80.0%	20.0%	100.0%
	Canberra	Count	4	0	4
		% within Registry	100.0%	.0%	100.0%
	Melbourne	Count	4	0	4
		% within Registry	100.0%	.0%	100.0%
	Perth	Count	5	0	5
		% within Registry	100.0%	.0%	100.0%
Total	Count		21	2	23
	% within Registry		91.3%	8.7%	100.0%

TABLE THIRTY: Registry by Legal Aid unsuccessful re Other Reason - represented litigants only

			8. other reason		
			No	Yes	Total
Registry	Brisbane	Count	9	1	10
		% within Registry	90.0%	10.0%	100.0%
	Canberra	Count	3	1	4
		% within Registry	75.0%	25.0%	100.0%
	Melbourne	Count	4	0	4
		% within Registry	100.0%	.0%	100.0%
	Perth	Count	3	2	5
		% within Registry	60.0%	40.0%	100.0%
Total	Count		19	4	23
	% within Registry		82.6%	17.4%	100.0%

TABLE THIRTY-ONE: Legal Aid Commission by Outcome of Legal Aid Application

			Q7. What was the ultimate outcome of the application?				Total
			Wholly unsuccessful	Some aid granted but not all or type requested	Aid requested was granted	Other	
Legal Aid Commission	LAQ	Count	24	2	16	2	44
		% within Legal Aid Commission	54.5%	4.5%	36.4%	4.5%	100.0%
ACT LA		Count	11	5	1	2	19
		% within Legal Aid Commission	57.9%	26.3%	5.3%	10.5%	100.0%
VIC LA		Count	8	2	16	3	29
		% within Legal Aid Commission	27.6%	6.9%	55.2%	10.3%	100.0%
WA LA		Count	3	6	7	1	17
		% within Legal Aid Commission	17.6%	35.3%	41.2%	5.9%	100.0%
Total		Count	46	15	40	8	109
		% within Legal Aid Commission	42.2%	13.8%	36.7%	7.3%	100.0%

TABLE THIRTY-TWO: Legal Aid Commission by Reason for Rejection in cases wholly unsuccessful

Why application was rejected	Brisbane		Canberra		Melbourne		Perth	
	N	%	N	%	N	%	N	%
Failed to satisfy the Means test	4	16.7	4	36.4	2	25.0	1	33.3
Failed to satisfy the Merits test	17	70.8	3	27.3	3	37.5	0	0.0
Outside Commonwealth Guidelines	4	16.7	2	18.2	3	37.5	2	66.7
Other reasons	3	12.5	2	18.2	3	37.5	0	0.0

TABLE THIRTY-THREE: Registry by Other Use of Legal Aid Services – Self-Represented Litigants only

			Q9. Any Yes?		Total
			No	Yes	
Registry	Brisbane	Count	50	94	144
		% within Registry	34.7%	65.3%	100.0%
	Canberra	Count	14	15	29
		% within Registry	48.3%	51.7%	100.0%
	Melbourne	Count	23	44	67
		% within Registry	34.3%	65.7%	100.0%
	Perth	Count	79	96	175
		% within Registry	45.1%	54.9%	100.0%
Total	Count		166	249	415
	% within Registry		40.0%	60.0%	100.0%

TABLE THIRTY-FOUR: Registry by Other Use of Legal Aid Services –Represented Litigants only

			Q15. Any Yes?		Total
			No	Yes	
Registry	Brisbane	Count	6	12	18
		% within Registry	33.3%	66.7%	100.0%
	Canberra	Count	3	4	7
		% within Registry	42.9%	57.1%	100.0%
	Melbourne	Count	12	7	19
		% within Registry	63.2%	36.8%	100.0%
	Perth	Count	1	12	13
		% within Registry	7.7%	92.3%	100.0%
Total	Count		22	35	57
	% within Registry		38.6%	61.4%	100.0%

Appendix Two: Litigant Questionnaire

SELF-REPRESENTED LITIGANTS QUESTIONNAIRE

1. What is your reason for attending court today?

If attending the Federal Magistrates Court, or attending only for divorce, thank and terminate questionnaire

2. Did you attend a mediation conference organised by Legal Aid at the beginning of your case? YES / NO (BRISBANE ONLY)

If respondent unsure, ask whether they attended a 'Legal Aid Conference'

3. Did you apply for legal aid for your current Family Court proceedings?

NO → question 4 YES → question 5

4. Why didn't you apply for legal aid for your current proceedings?

Allow respondent to give a discursive answer. Indicate which option or options apply and probe for full details, including income and assets if relevant.

1.	told not eligible for legal aid (<i>by whom? why?</i>)
2.	told a legal aid application would not be successful (<i>by whom? why?</i>)
3.	preferred to represent themselves (<i>why?</i>)
4.	didn't think they were eligible for legal aid (<i>why not?</i>)
5.	didn't think application for legal aid would be successful (<i>why not?</i>)
6.	didn't want to make any contribution to legal representation (<i>why not?</i>)
7.	didn't want a lawyer assigned to them without any choice (<i>why think that?</i>)
8.	didn't want a charge put over their house
9.	couldn't get legal aid for this type of case (<i>why not?</i>)
10.	thought they'd reached the legal aid cap (<i>aware of discretion?</i>)
11.	other reason (<i>what?</i>)

GO TO QUESTION 9

5. Have you ever received legal aid for your current Family Court proceedings?

NO → *question 6* YES → *question 8*

6. Can you recall why your legal aid application was unsuccessful?

Allow respondent to give a discursive answer. Indicate which option or options apply and probe for full details, including income and assets if relevant.

1.	income was too high (<i>how high?</i>)	<i>Go to Q 7</i>
2.	had too many assets (<i>what kind?</i>)	<i>Go to Q 7</i>
3.	associated person's income was too high (<i>which person? how high?</i>)	<i>Go to Q 7</i>
4.	associated person had too many assets (<i>which person? what kind of assets?</i>)	<i>Go to Q 7</i>
5.	case did not have good prospects of success (<i>why not?</i>)	<i>Go to Q 9</i>
6.	couldn't get legal aid for this type of case (<i>what type?</i>)	<i>Go to Q 9</i>
7.	no further legal aid funding available (<i>why not?</i>)	<i>Go to Q 9</i>
8.	other reason (<i>specify</i>)	<i>Go to Q 9</i>

7. Did you feel that you:

Read out both options. Indicate which one applies and probe for full details

1.	could not afford to pay for a lawyer yourself (<i>why not?</i>)
2.	could afford a lawyer but didn't want to pay for one (<i>why?</i>)

GO TO QUESTION 9

8. Why don't you have a lawyer representing you today?

Allow respondent to give a discursive answer. Indicate which option or options apply and probe for full details.

1.	grant of legal aid terminated or not extended (<i>why?</i>)
2.	refused aid for this particular hearing (<i>why?</i>)
3.	conserving limited legal aid funds (<i>how?</i>)
4.	decided they didn't want legal representation (<i>why?</i>)
5.	this is just a one-off appearance on their own (<i>why?</i>)
6.	other reason (<i>specify</i>)

9. Have you had any other assistance from Legal Aid in relation to your current Family Court proceedings? For example have you:

Read out all options and indicate which apply. Probe for further details where applicable

1.	attended a legal advice session at a legal aid office?
2.	had an appointment with a legal aid lawyer?
3.	received help from legal aid in completing a document or letter?
4.	received advice over the telephone from legal aid?
5.V	received assistance from a legal aid duty lawyer here at the court? (MELBOURNE ONLY)
6.X	attended legal aid's family law court advice service? (PERTH ONLY)
7.V	attended legal aid's unrepresented litigants program? (MELBOURNE ONLY)
8.	obtained information from the Legal Aid Commission's website? <i>(what kind of information?)</i>
9.Q	used a self-help kit produced by legal aid? <i>(which kit? where did you access it: website, office, CLC, other?)</i> (BRISBANE ONLY)
10.	been referred by legal aid to a Community Legal Centre?
11.	received other assistance from legal aid? <i>(specify)</i>

GO TO DEMOGRAPHICS

REPRESENTED LITIGANTS QUESTIONNAIRE

10. What is your reason for attending court today?

If attending the Federal Magistrates Court, or attending only for divorce, thank and terminate questionnaire

11. You said you had represented yourself during your current Family Court proceedings. For what part or parts of your proceedings did you represent yourself?

12. Why did you represent yourself?

Allow respondent to give a discursive answer. Indicate which options or options apply and probe for full details.

1.	didn't think they needed a lawyer (<i>why?</i>)	<i>Go to Q 15</i>
2.	didn't want a lawyer (<i>why?</i>)	<i>Go to Q 15</i>
3.	sacked their previous lawyer (<i>why?</i>)	<i>Go to Q 15</i>
4.	conserving limited legal aid funds (<i>how?</i>)	<i>Go to Q 15</i>
5.	it was a one-off occasion (<i>what?</i>)	<i>Go to Q 15</i>
6.	didn't think they could get legal aid	<i>Go to Q 13</i>
7.	had applied for legal aid but no decision had been made (<i>how long did they have to wait?</i>)	<i>Go to Q 15</i>
8.	had applied for but been refused legal aid	<i>Go to Q 14</i>
9.	legal aid was terminated or not extended (<i>why?</i>)	<i>Go to Q 15</i>
10.	other reason (<i>specify</i>)	<i>Go to Q 15</i>

13. Why did you think you couldn't get legal aid?

Allow respondent to give a discursive answer. Indicate which option or options apply and probe for full details, including income and assets if relevant.

1.	told they were not eligible for legal aid (<i>by whom? why?</i>)
2.	told that a legal aid application would not be successful (<i>by whom? why?</i>)
3.	did not think they were eligible for legal aid (<i>why not?</i>)
4.	did not think an application for legal aid would be successful (<i>why not?</i>)
5.	could not get legal aid for this type of case (<i>why not?</i>)
6.	thought they'd reached the legal aid cap (<i>aware of discretion?</i>)
7.	other reason (<i>specify</i>)

GO TO QUESTION 15

14. Can you recall why your legal aid application was unsuccessful?

Allow respondent to provide a discursive answer. Indicate which option or options apply and probe for full details, including income and assets if relevant.

1.	income was too high (<i>how high?</i>)
2.	had too many assets (<i>what kind?</i>)
3.	associated person's income was too high (<i>which person? how high?</i>)
4.	associated person had too many assets (<i>which person? what kind of assets?</i>)
5.	case did not have good prospects of success (<i>why not?</i>)
6.	couldn't get legal aid for this type of case (<i>what type?</i>)
7.	no further legal aid funding available (<i>why not?</i>)
8.	other reason (<i>specify</i>)

15. While you were representing yourself, did you receive any (other) assistance from Legal Aid? For example did you:

Read out all options and indicate which apply. Probe for further details where applicable

1.	attended a legal advice session at a legal aid office?
2.	had an appointment with a legal aid lawyer?
3.	received help from legal aid in completing a document or letter?
4.	received advice over the telephone from legal aid?
5.V	received assistance from a legal aid duty lawyer here at the court? (MELBOURNE ONLY)
6.X	attended legal aid's family law court advice service? (PERTH ONLY)
7.V	attended legal aid's unrepresented litigants program? (MELBOURNE ONLY)
8.	obtained information from the Legal Aid Commission's website? <i>(what kind of information?)</i>
9.Q	used a self-help kit produced by legal aid? <i>(which kit? where did you access it: website, office, CLC, other?)</i> (BRISBANE ONLY)
10.	been referred by legal aid to a Community Legal Centre?
11.	received other assistance from legal aid? <i>(specify)</i>

16. Do you now have a grant of legal aid?

NO → *Demographics*

YES → **how did that come about?**

GO TO DEMOGRAPHICS

DEMOGRAPHICS

17. What issues are involved in your case?

Read out options and indicate all that apply

1.	your or your ex-partner's contact with your children?
2.	who your children should live with?
3.	dividing up the property between you and your ex-partner?
4.	maintenance for yourself or your ex-partner?
5.	you or your ex-partner wanting to relocate within Australia?
6.	alleged abuse of your child or children?
7.	alleged domestic violence by you or your ex-partner
8.	enforcement of court orders (<i>what kind of orders?</i>)
9.	other issue(s) (<i>specify</i>)

18. Sex M F

19. What is your highest grade of schooling or other education?

1.	no formal schooling
2.	primary school
3.	fourth form / year 10
4.	end of secondary school
5.	trade qualification or apprenticeship
6.	certificate or diploma
7.	bachelor degree or higher
8.	other (<i>specify</i>)

20. Do you currently have paid work?

YES → *question 21* NO → *question 22*

21. What is your job?

22. Do you receive any government benefits? (*specify*)

23. What is the postcode of the suburb or town where you live?

24. Were you born in Australia?

YES → *question 28* NO → *question 25*

25. In which country were you born?

26. Do you speak a language other than English at home?

YES → question 27 NO → question 29

27. Which language do you speak at home?

28. Are you of Aboriginal or Torres Strait Islander descent? YES NO

29. Are you aged:

1.	under 20	4.	40-49
2.	20-29	5.	50-59
3.	30-39	6.	60-69

30. After tax, is your income:

	Per annum (net)	Per week (approx.)	Per fortnight (approx.)
1.	< \$15,000	< \$300	< \$600
2.	\$15,000-\$19,999	\$300-\$399	\$600-\$799
3.	\$20,00-\$24,999	\$400-\$499	\$800-\$999
4.	\$25,000-\$29,999	\$500-\$599	\$1000-\$1199
5.	\$30,000-\$34,999	\$600-\$699	\$1200-\$1399
6.	\$35,000-\$39,999	\$700-\$799	\$1400-\$1599
7.	\$40,000-\$49,999	\$800-\$999	\$1600-\$1999
8.	\$50,000-\$74,999	\$1000-\$1499	\$2000-\$2999
9.	\$75,000-\$99,999	\$1500-\$1999	\$3000-\$3999
10.	\$100,000+	\$2000+	\$4000+

31. Do you own any property such as:

1.	a house	5.	a business
2.	land	6.	a farm
3.	shares	7.	money in a bank account
4.	other investments	8.	other (<i>specify</i>)

If never applied for or received legal aid

Thank you, I have no further questions

Date

Interviewer

PERMISSION TO LOOK AT LEGAL AID FILE

If applied for, or received, legal aid

Finally, can we have your permission to check your legal aid file? The reason for this is that there may be information on the file that you haven't been able to give us, but that will help in giving a complete picture of the availability of legal aid in family law cases, and reasons why people may be compelled to represent themselves.

We will pass on the details of all people who give their permission to the Legal Aid Commission, and they will check the files and give the information back to us **in a way that does not identify you**. Your name will not be attached to the information. The Legal Aid Commission will not see your specific answers to this questionnaire, or be able to connect your answers to your file. Information from your file will only be reported as part of an overall percentage (e.g. this happened in 10% of cases and that happened in 30% of cases).

If agreed

Where did you apply for legal aid (legal aid office)?	
Approximate date(s) of application?	
What is your full name?	
What was your address when you made the application?	
What is your date of birth?	
What was the full name of the other party?	

Could you please sign here to indicate your permission for your file to be looked at for the research?

Signed: _____

Date: _____

Witnessed: _____

Thank you very much for your time. I have no further questions.

Appendix Three: Legal Aid File Questions

SELF REPRESENTED LITIGANTS RESEARCH

LEGAL AID FILES

ID Number (from permission form) _____

Was the litigant's record able to be located? **YES** **NO**

Has the litigant applied for legal aid in relation to a Family Law matter? **YES**
NO

How many times have they applied for legal aid for family law? (*how many different file numbers?*) _____

For **the most recent application** for legal aid made by the litigant, please answer the following questions.

GENERAL

1. Date of application: _____

2. Litigant is: Male Female

3. Number of dependants currently living with litigant: _____

4. What aid was applied for? (*ie. conference, interim hearing, trial, etc.*)

5. Litigant was: Applicant Respondent **in the relevant proceedings.**

6. Did the litigant seek reconsideration of the initial decision on the application?

YES **NO**

7. What was the ultimate outcome of the application?

1. Wholly unsuccessful (*Go to Part A*)
2. Some aid granted but not all or type requested (*Go to Part B*)
3. Aid requested was granted (*Go to Part C*)

OUTCOMES

PART A: If application wholly unsuccessful:

8. Why was the application rejected? circle all that apply

1. Failed to satisfy the Means test (*If yes, complete Part D*)
 2. Failed to satisfy the Merits test (*If yes, complete Part E*)
 3. Other reason (*If yes, complete Part F*)
-

PART B: Some aid granted but not all or type requested:

9. Please summarise the main difference between the aid requested and the aid provided

10. Why did the aid provided differ from what was requested? circle all that apply

1. Related to Merits test (*If yes, complete Part E*)
2. Other reason (*If yes, complete Part F*)

11. Was any contribution required from the litigant?

1. Cash contribution
2. Equitable charge
3. Irrevocable authority
4. Other (*specify*) _____

PART C: Application for legal aid successful:

12. If a conference was held, what recommendation was made as to the merits of further funding? (BRISBANE, CANBERRA AND PERTH ONLY)

13. To whom was representation assigned?

1. Private practitioner
2. In-house lawyer

14. Was any contribution required from the litigant?

1. Cash contribution
2. Equitable charge
3. Irrevocable authority
4. Other (*specify*) _____

15. Was aid terminated or not extended at any stage? NO YES →
circle all that apply

1. Related to Means Test (*If yes, complete Part D*)
2. Related to Merits Test (*If yes, complete Part E*)
3. Reached legal aid cap
If yes: was cap extended at all? YES NO
If yes: how far was cap extended? \$ _____
4. Other reason (*If yes, complete Part F*) _____

15a. Did the litigant seek reconsideration of the decision to terminate aid?
NO YES → (MELBOURNE, CANBERRA AND PERTH ONLY)

15b. What was the outcome of the reconsideration? (MELBOURNE, CANBERRA AND PERTH ONLY)

1. wholly unsuccessful
2. some further aid granted, but not all or type requested -->
specify what was granted _____
3. further aid requested was granted

REASONS

PART D: Legal aid refused or terminated because of the Means Test:

16. Please give the main reason why the litigant failed to satisfy the Means Test?
 (e.g. income was below threshold but home equity and shares put assets above threshold)

17. Please provide the following information on the litigant's income and assets

(BRISBANE ONLY)	The applicant	Financially Associated Person(s)
INCOME		
Total weekly gross income from all sources		
Primary source of income = Centrelink? (yes/no)		
Contribution free threshold income		
Maximum threshold income		
ASSETS		
Total assessable assets		
Total home equity		
Total equity in a farm or business		
Total motor vehicle equity		
Equity in other property		
Cash		
Shares etc.		
Superannuation		
Other disposable assets (specify):		

(MELBOURNE, CANBERRA AND PERTH ONLY)	The applicant	Financially Associated Person(s)
INCOME		
Total weekly gross income from all sources <i>(excluding family allowance and board)</i>		
Total assessable income		
Contribution free threshold income <i>(total figure applying to both)</i>		
Estimated cost of case – Category		
Estimated cost of case – Amount <i>(total figure applying to both)</i>		
Maximum allowable weekly income <i>(total figure applying to both)</i>		
ASSETS		
Total assessable assets		
Total home equity		
home equity threshold <i>(total figure applying to both)</i>		
Total equity in a farm or business		
farm/business equity threshold <i>(total figure applying to both)</i>		
Total motor vehicle equity		
motor vehicle equity threshold <i>(total figure applying to both)</i>		
Equity in other property		
Cash		
Shares etc.		
Superannuation		
Other disposable assets <i>(specify):</i>		
Allowable assets <i>(total figure applying to both)</i>		

18. Could any other person or group pay for the litigant's legal fees?

PART E: Legal aid refused or terminated because of the Merits Test:

19. Please give the main reason why the litigant failed to satisfy the merits test *(e.g. no reasonable prospect of success, matter did not justify expenditure of public funds, etc.)*

PART F: Legal aid refused, restricted or terminated for some other reason:

20. Please give the main reason why legal aid was refused, restricted or terminated *(e.g. guidelines (specify which), reached funding cap, etc.)*

END OF QUESTIONS