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☎ t: (03) 9269 0246 f: (03) 9269 0440
E-mail: LindaM@vla.vic.gov.au

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Ms Kerryn Risely
Executive Officer
Victorian Parliament Law Reform Committee
Parliament House
Spring Street
MELBOURNE VIC 3002

Melbourne Office
350 Queen St
Melbourne VIC 3000
GPO Box 4380
Melbourne VIC 3001
DX 210646 Melbourne VIC
t: 03 9269 0234
1800 677 402
www.legalaid.vic.gov.au
ABN 42 335 622 126

By email to: vpirc@parliament.vic.gov.au

Dear Ms Risely

Supplementary questions -Inquiry into Vexatious Litigants

I refer to the supplementary questions sought by the Victorian Parliament Law Reform Committee's Inquiry into Vexatious Litigants and attach Victoria Legal Aid's response for your consideration.

If you would like to discuss any of our comments please contact myself or Linda Murdoch (Manager Policy and Planning) on 9269 0246.

Yours faithfully

BEVAN WARNER
Managing Director

**Victoria Legal Aid Response
To Supplementary Questions
Victorian Parliament Law Reform Committee Inquiry Into Vexatious Litigants**

1. *Do Victoria Legal Aid's funding guidelines provide for grants of legal assistance to people who are subject to an application under section 21 of the Supreme Court Act 1986 ie. an application for a vexatious litigant order?*

VLA's funding guidelines can be accessed from our website on:

<http://www.legalaid.vic.gov.au/handbook.htm>.

As there are very few relevant matters at any given time, VLA has not needed to create a specific guideline for this issue. An application by a person involved with this issue would be dealt with under our general civil law guidelines, but may also be regarded as a public interest matter under the relevant special guideline for such cases. Applications for grants of legal assistance are subject to means and merit assessment. Application forms (for grants of assistance) do not require the applicant to provide information on whether the applicant is subject to an s 21 order.

2. *Do Victoria Legal Aid's funding guidelines provide for grants of legal assistance to people who are already subject to a vexatious litigant order and are seeking to appeal the order or are seeking leave to bring further proceedings?*

All applications for grants of legal assistance are subject to means and merit assessment. VLA has provided legal assistance to people who are subject to s21 orders. This assistance was not provided for the purposes of appealing the s21 order but was provided for one person to seek leave to bring further proceedings.

3. *Without referring to specific cases, has Victoria Legal Aid provided grants of legal assistance in the past in these circumstances? On how many occasions?*

VLA does not keep data under this funding activity or category. Anecdotal information indicates that VLA provided funding to two people who were the subject of an application under s21 of the *Supreme Court Act 1986*, in relation to a substantive civil law issue and not in relation to the s21 application or order.

4. *Does Victoria Legal Aid have a view on whether people who are subject to an application under section 21 should have a right to legal assistance?*

VLA strongly believes that persons the subject of an application for a vexatious litigant order should be entitled to representation. Vexatious litigant declarations

are a significant limitation on a person's civil liberties and should be considered only in a context of natural justice and fair play. With regards to legal assistance in such matters, VLA supports the provision of legal assistance generally subject to means and merit assessments as required by current VLA funding guidelines.

5. *Does Victoria Legal Aid have a view on whether section 21 is effective in dealing with vexatious litigants?*

VLA holds the view that the s21 is effective in limiting litigation activity.

6. *Victoria Legal Aid's submission recommends some changes to the law, some of which are reflected in the Standing Committee of Attorneys-General's model vexatious litigants bill - are there any other aspects of that bill that Victoria Legal Aid either supports or opposes?*

VLA has no further observations or comments to make on this section.

7. *Does Victoria Legal Aid have a view about the system of civil restraint orders used in the United Kingdom?*

No.

8. *Victoria Legal Aid's submission expresses concern about any proposal for compulsory psychiatric evaluation of litigants. Are there other ways that the courts could respond to any mental health issues associated with vexatious litigants eg. should support services be available on a voluntary basis?*

As a general statement, VLA supports (legislative and policy) strategies, initiatives and interventions that are compatible with the spirit and intent of the Charter for Human Rights (Vic). Court-ordered medical evaluations should be used sparingly and only in appropriate circumstances. Assumptions should not be made that querulous or 'difficult' litigants are in need of psychiatric evaluation. Clear guidelines and criteria need to be established to guide the Court.

9. *Some other stakeholders have argued that early access to legal advice and more funding for the community legal centre would help prevent vexatious litigation, but other evidence suggests that some declared vexatious litigants have been self-represented by choice. Does Victoria Legal Aid have a view about whether increased access to legal advice would have an impact on vexatious litigation?*

VLA doubts that early access to legal advice would do anything to reduce the instances of 'vexatious' litigation. In our experience, access to such advice is not

a determinant of future litigation behaviour. In the cases with which we are familiar, access to advice and the timeliness of that advice was not a factor in the litigant's later conduct.

2. Further information

Enquiries may be directed in the first instance to:

Linda Murdoch (Manager, Policy)
Phone: (03) 9269-0246
E-mail: LindaM@vla.vic.gov.au