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Law Reform Committee



Lawyers And
Legal Services

Your reference ECTS

Our reference LM:TP

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Ms Kerry Risely
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Dear Ms Risely

Inquiry into Vexatious Litigants

I refer to the Victorian Parliament Law Reform Committee's Inquiry into Vexatious Litigants released in September 2007.

I submit 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

A handwritten signature in black ink that reads "A. Parsons".

TONY PARSONS
Managing Director

**Victoria Legal Aid Response
To the
Victorian Parliament Law Reform Committee Inquiry into Vexatious Litigants**

1. About Victoria Legal Aid

Victoria Legal Aid (VLA) is a leading force for social justice. Our mandate is to protect legal rights, with a particular emphasis on the rights of the marginalised and economically disadvantaged.

VLA employs 189 lawyers who provide legal services from our 14 offices in metropolitan and rural Victoria. This makes us the largest and most accessible criminal law and family law practice in the state. We also practice in the area of human rights and civil law and provide specialist legal services to children and young people.

In 2006-07, VLA provided:

- 28,538 grants of assistance for legal representation by private lawyers
- 13,482 grants of assistance for legal representation by VLA lawyers
- 63,509 duty lawyer services across a range of courts
- 55,482 legal advice sessions
- 72,254 legal information services, conducted in 15 languages
- 559,360 legal education publications (printed and downloaded)
- 654 family law dispute resolution conferences.

2. Executive summary

Victoria Legal Aid supports strategies that encourage and facilitate people's access to the justice system. VLA recommends the appointment of Coordinators to assist self represented litigants at the Magistrate's Court and the County Court to enhance understanding of the steps involved in litigation proceedings. VLA recognises the need for courts to appropriately respond to vexatious litigants who present unique challenges to the administration of justice and supports proposals to broaden categories of persons who have standing to bring applications for a vexatious person's proceeding order.

3. Previous submissions on vexatious litigants

Victoria Legal Aid submitted a response to the Civil Justice Review first exposure draft on 7 August 2007 on vexatious litigants. This paper includes comments and recommendations made to the Civil Justice Review.

4. VLA recommendations

VLA supports enhanced measures to respond to vexatious litigants, including providing each jurisdiction (Supreme, County, and Magistrates' Courts, and VCAT) with the power

to make vexatious proceedings orders in respect of proceedings in that particular court or tribunal, while retaining the Supreme Court's ability to make vexatious proceedings orders for all jurisdictions. VLA supports proposals that widen the category of persons with standing to bring an application for a vexatious proceedings order, to specifically include the Principal Registrar of the Supreme Court.

It is noted however, that that the operation of these procedures needs to adequately implement the rights contained in the *Charter of Human Rights and Responsibilities* (particularly section 24(1), the right to a fair hearing).

VLA reiterates its concerns about the current operation of 'litigation guardians' in the civil justice system. It is our belief that the reason that many people or organisations do not act as litigation guardians (for example, the Office of the Public Advocate) is that, by doing so, they potentially expose themselves to adverse costs orders. As submitted to the Civil Justice Review, VLA submits that consideration be given to costs indemnities for people or organisations acting as litigation guardians, as this may significantly improve the operation of the system in this area.

VLA expresses significant concern about any proposal that may require people who may be vexatious litigants to undergo compulsory psychiatric evaluation. This evaluation would be overly intrusive into that person's private life and may raise mental health issues unrelated to the court proceedings.

Finally, VLA does not support the proposal that a court may prevent a person from pursuing a claim unless they are legally represented. It is our belief that this would arbitrarily restrict that person's access to justice, flout the right to appear in person, is overly expensive, and is likely to be in contravention of the right to a fair hearing contained in the Charter of Human Rights and Responsibilities. It is imperative that cases with merit be given the opportunity to be heard including those who have been ruled vexatious.

5. Further information

For further information please contact:

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