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VALS' submission to the Victorian Law Reform Commission in response to the Civil Justice Review – sent 8 December 2006

Thank you for the opportunity to comment on the Civil Justice Review. This submission contains suggestions aimed at making the civil law system more expeditious, simplified and affordable. A review of civil law is timely and important.

VALS suggests that the following should be introduced:

1. Substantive change;
2. Acknowledge the scope of exclusion the civil law system presents now;
3. Koori Impact Statement: Consideration of the impact of reform on disadvantaged in order to address the current problem of unmet legal need and not further perpetuate this problem;
4. Application of Principle 3: Danger of reform leading to more potential Disincentives to Access Civil Law;
5. Adopt Good Practice in Community Education;
6. Standardised forms/rules/court fees that are uniform across jurisdictions and in plain English and simple;
7. Pre-Issuing procedure. The purpose of the Pre-Issuing Procedure is to determine the merit of an application (determined by a Judge after a Compulsory Mediation Conference) before proceeding to a Directions Hearing, and ensure all documentation is provided at the Directions Hearing;
8. Enhanced access to legal representation through Civil Law Specialist lawyers being available at Courts and Civil Law Legal Aid funding increasing;
9. Amendments to the Wrongs Act 1958 (Vic) to change the percentage of injury required to meet the threshold level;

How to meet objectives in the Consultation Paper

In order to achieve the following:

- *promotion of the principles of fairness, timeliness, proportionality, choice, transparency, quality, efficiency and accountability in the civil justice system. This will involve improving the civil justice system for the benefit of those who may customarily or occasionally use it and for those who administer it.*

There needs to be:

1. Substantive change

The above objective suggests that something beyond incremental change may be considered. Also, it suggests that something more substantive in relation to reform is

possible. However, the review Consultation Paper provides little by way of descriptive or analytic statements about how the civil law system operates now.

2. Acknowledgement of the problem of unmet legal need, especially for disadvantaged groups

VALS urges the Victorian Law Reform Commission to acknowledge the scope of exclusion the civil law system presents now due to the content of existing law, cost, lack of knowledge about the law,the legal system, and the lack of accessible dispute resolution options.

Supporting material

There is a growing body of research which indicates that there is significant unmet legal need in the community and that many members of disadvantaged groups do not seek assistance. The NSW Law and Justice Research and similar studies in the UK (Genn and Pleasance) and Scotland are examples of this work.

Types of Barriers

Other more qualitative approaches to the problem of unmet legal need have identified barriers, such as lack of knowledge of rights, lack of confidence and lack of support (Curren 2006). There are other factors which make access to civil law increasingly problematic. These include the continuing increase in the number and complexity of laws, and the virtual absence of legal aid to assist people with cases or limited funding to a point..

Barriers in relation to complaints about Police

Barriers to access civil law in relation to complaints against police are not only the already considerable disincentives for a complainant, but also the uncertainty around whether one is suing the Police Department or the individual police officer or its employer the State. Here we have a Government service, with enormous legal and coercive powers, and yet the Government, no doubt for cost reasons, wants to maximise its power to deny responsibility for police wrong doing. The relevant legislation is section 123 of the Police Regulation Act 1958, a provision unique to Victoria. The unintended consequence of this, and other disincentives (ie: fear of retribution), is that police accountability and the legitimacy of the force is undermined. A citizen who wants to make the police accountable through the civil law Courts is effectively priced out of the market. The large legal firms that provide pro bono [no fee] for services are restricted in assisting the disadvantaged on account of potential conflict of interest claims or they act for the Defendant the State. Only large legal firms have the ability to fund and run expensive, time consuming legal actions. There other areas of Government law reform, such as the Wrongs Act (Vic) 1958, which we discuss below which narrow the goal posts and create a strong cross wind effectively blocking large numbers of people seeking a remedy.

Barriers to specialist civil law initiative

It is ironic that even specialist civil law Government initiatives, such as the Equal Opportunity Commission (Commission), which adopts an outreach model to receiving complaints and utilizes conciliation, the system has major accessibility flaws. These include a low level of use of the Commission by Aboriginal people, lack of knowledge about how the system works, inflexibility in that clients must go through conciliation before getting to the Victorian Civil and Administrative Tribunal and unwillingness by some large organizations (ie: schools and hospitals), defending a claim, to use the conciliation process in good faith. The latter behavior turns a supposed low cost less formal procedure into another step in delaying resolution of matters.

3. Koori impact Statement: Consideration of the impact of reform on disadvantaged in order to address the current problem of unmet legal need and not further perpetuate this problem

The situation now: limited consideration of impact of reform on citizens and emphasis on the question of whether the mainstream will accept the change and what it will cost

While Government decisions will almost always be constrained by cost considerations there is little opportunity for considered community input to many of the decisions to reduce access or opportunity to utilise the Courts or other dispute resolution options. The analysis of costs and benefits of increasing complexity of the system, reducing entitlements or pricing civil justice further out of reach does not appear to take account of unintended costs and reduced benefits to citizens.

The unwritten principles which appear to underpin many changes is 'will the mainstream accept this change and what will it cost'? There may then be some consideration of the needs of disadvantaged groups and a pamphlet or some other after thought will be developed.

What should happen: adopt principle that 'the least well resourced groups will be better off under the proposed changes'

VALS recommend the establishment of principles which will improve equity and accessibility to try to compensate or balance the dominance of superficial cost factors and the (incorrect) presumption of a level playing field. For example, any proposed changes to the civil law system should adopt the principal that 'the least well resourced groups will be better off under the proposed changes'.

'Koori impact statement'

More specifically, VALS has previously advocated to Government that a 'Koori impact statement' at an early stage in the development of major policy should be a part of the legislative process to help maximize the inclusion of a wholistic approach at the earliest stage possible, rather than tacked on the end of a process. It is difficult to develop reform that ensures equity when equity is tacked on the end of the process. It will be easier to design a system that delivers equity if equity is considered at the beginning of the process. When there is incremental change and the impact on disadvantaged people is not considered, then disadvantaged people find themselves

experiencing systemic discrimination over time (ie: the impact of incremental change adds up and results in barriers to accessing the civil law system).

Over a decade ago the idea of legal aid impact statements prior to introducing new legislation was suggested as a reminder of the related costs associated with a prodigious enthusiasm for legislating to solve problems. VALS is not aware of any cost analysis in relation to the individuals who are excluded by deliberate and systemic discrimination at a legislative and a procedural level.

4. Application of Principle 3: Danger of reform leading to more potential Disincentives to Access Civil Law

The potentially detrimental impact of the reforms on disadvantaged people due to the creation of more disincentives to use the civil law system

VALS is concerned that the following objective of the review will be interpreted and applied in a manner that creates more economic disincentives to use the civil law system: *It will also encompass reforms which will facilitate greater access for people with civil claims with merit, the introduction of more procedural and economic disincentives to the pursuit of claims or defences without merit, and an improvement in alternative dispute resolution mechanisms.*

There are all ready a range of economic disincentives to citizens using the civil justice system. The addition of new economic disincentives will affect people on low incomes disproportionately, as do the present economic disincentives.

Merit: not simply a technical or functional issue but one that exists in a specific historic and socio-economic context

VALS believes that the idea of whether a matter has merit and whether the civil justice system can be utilized has to be understood not simply as a technical or functional issue but one that exists in a specific historic and socio-economic context. People's ignorance of the law and how the system operates is a huge access barrier. There is also the fact that better informed parties, or people who can afford to get accurate advice about how to use the system, will be at a considerable advantage over those who cannot.

The concept of merit is problematic. For a person on low or no income the importance of speedy resolution of a civil claim may be of enormous significance to their economic and social well being. Parents of a child who is being excluded from school, or subject to bullying may find they are not able to speedily obtain assistance and so their child becomes an early school leaver as the delay in resolving the issue contributes to failing the year.

<u>Pre-issuing Procedure: via paper work</u>

Later in our submission we make suggestions about pre-hearing disclosure of information. On the one hand, filing all information that a Plaintiff or a Defendant wants to rely on prior to getting to Court is a cost effective use of Court time (ie: Pre-

Issuing Procedure outlined below). On the other hand, such a system fails to take into account:

- the degree of difficulty for a person assembling all the relevant paper work;
- the urgency of the matter and
- the impact it has on particular people or groups of people.

Pre-issuing Procedure: in person

VALS argues that being able to call all the relevant parties together to collect statements would be a less paper intensive and quicker strategy for clarifying whether a matter has merit and whether delay in resolving the matter would create significant hardship for one of the parties.

Flexibility

Flexibility should not be overlooked when trying to meet the objective outlined above. The principal of flexibility should be applied to both forms of pre-issuing procedure outlined above.

Reform of the civil justice system has to incorporate greater flexibility in responding to the needs of people for whom delay in resolution of a matter will result in significant disadvantage.

5. Adoption of Good Practice in Community Education

A further principle is that there needs to be a policy in relation to providing effective community education material, particularly to disadvantaged groups. A report entitled, Good Practice in Consumer Education for Indigenous People (2002)[1] highlights that activities which might be called consumer education, or include consumer education, may seek to provide consumers with information about the availability of a service, aim to empower them to take more control of their situation or be primarily focused on changing consumer behaviour.

The report identifies some of the issues and needs in relation to Indigenous Australian people and sets forth ten principles.

Principles of Good Practice in Indigenous Specific Consumer Education

- **Context:** Understand the context;
- **Community involvement:** Ensure effective community involvement in all stages of the project;
- **Resource limitations:** Consider partner organisation's resource limitations;
- **Diversity and knowledge:** Acknowledge cultural diversity and consumers' existing knowledge;
- **Planning and evaluation:** Use appropriate planning and evaluation;
- **Consumer's motivation:** Consider consumers' motivation to learn;
- **Two way dialogue:** Engage in dialogue with consumers/two way learning;

[1] Renouf Gordon 'Good Practice in Consumer Education for Indigenous People' Australian Securities and Investment Commission (2002).

- **Appropriate format and distribution:** Use appropriate formats and distribution channels;
- **Long term projects rather than pilots:** Promote longer term sustainable activities rather than pilot projects and *ad hoc* responses;
- **Coordination, collaboration and networking:** Contribute to coordination, collaboration and networking.

The report highlights some features of long term strategies. Examples of long term strategies include those operated by the New South Wales Department of Fair Trading, the Aboriginal Resource Development Service and the Top End Women's Legal Service. These projects typically involve:

- an ongoing repetitive cycle of development – implementation – review and redevelopment
- participatory research or at least community focused research in the planning and evaluation stages
- long time-frames and continuous operation over many years
- an emphasis on face to face communication with groups and individuals and/or participation in Indigenous community events
- a relatively high commitment of staff resources
- non-tokenistic employment of Indigenous Australian staff and a high value placed on the communication skills of those staff
- close linkages with other activities, usually direct services to individual clients
- a explicit or implicit agenda of working with the community as much as or more than educating particular individuals.

Due to resource limitations and the need to work intensively with consumer groups most projects concentrate on a small number of communities. The New South Wales Department of Fair Trading's strategy is an exception as it targets a wide range of communities in New South Wales.

6. Standardised forms/rules that are uniform across jurisdictions and in plain English and simple.

Rules of Civil Procedure (Questions 2-3)

The rules of Civil Procedure in the Supreme Court, the County Court and the Magistrates' Court require reform. The change that should be implemented is that the current cumbersome rules should be in plain English and standardized so that they are uniform regardless of the jurisdiction.

Pleadings (Question 14)

VALS argues that the rules about pleadings in civil proceedings need reform. The rules need to be standardized and simplified for all jurisdictions.

Fees and Costs (Questions 52-62)

There is a need to restructure Court fees. The amount of Court fees should not be dependant on the amount being claimed for in damages, but there should be a standard rate of court fees regardless of the amount of damages being claimed. The current

situation is unfair because people who are suing for a higher amount of money have higher Court fees.

7. Pre-Issuing Procedure

Before Proceedings are Commenced (Questions 4-5)

VALS believes that the following steps should be taken before civil proceedings commence to overcome the problem of delay and cost caused by the merit of applications not being assessed until the Hearing stage and methods of collecting documentation.

General: Pre-Issuing Procedure

Introduce a Pre-Issuing procedure. The purpose of the Pre-Issuing Procedure is to determine the merit of application (determined by a Judge after a Compulsory Mediation Conference) before proceeding to a Directions Hearing, and ensure all documentation is provided at the Directions Hearing. This is in the interests of efficiency (ie: reduce cost, delay). Only cases that have merit will proceed to the Directions Hearing and all documentation will be available at the Directions Hearing. The Directions Hearing will not be taken up by setting time lines for filing documents in the future etc, but setting the Hearing date etc. Applications for the Pre-Issuing Procedure will be filed (ie: Summons/Complaint/Writ, and a Defence/Appearance) and all other documents the parties intend to rely upon to support or defend a claim. These documents will be in a Court Book available for the compulsory Mediation Conference before the formal Hearing if the claim reaches this final stage. Material other than that provided in the Court Book as such should not be accepted and cannot be relied on at the final Hearing if the claim reaches this stage. The time for filing and service of these documents would require additional times to be extended. A Judge will preside during the Pre-Issuing Procedure and compulsory Mediation Conference before the pre Issuing stage It is essential that individuals have the assistance of a lawyer at the pre-Issuing procedure stage.

Specific: Steps for Plaintiff

1. When a Plaintiff wants to issue civil proceedings in a Court the Complaint/Summons/Writ should have attached to it all the facts, law, legal claims, list all witnesses, specialists (medical/others), Pleadings and Discoverable documents to be relied on. This document would be comprehensive, standardized, used in all jurisdictions and have one title in all jurisdictions.
2. The filed documents are assessed by a Judge in terms of whether the case/claim has merit.
3. If the case is approved by a Judge as having merit, then it could proceed with being referred for a compulsory Mediation Conference listed for the parties to attend. Once the Conference has been held, and if the case is not settled, a Judge then determines that the case has merit and should then move to the next stage, the Issuing stage. The material the parties have/intend to rely upon is then filed and a Court Number of the Claim is

given to the matter. The next step is a Directions Hearing all parties attend, and the case is listed for a Hearing.

4. If the case is rejected by a Judge, then a Review of the decision could be requested, and a final decision made by a Court Appointed Review Officer (ie: also a Judge). There is to be no Appeal from this decision to issue proceedings.

Specific: Steps for Defendant

When a Defendant is notified or becomes aware that there is a civil legal claim against him then the following should be taken before a civil proceeding is commenced:

5. The Defendant file a similarly comprehensive Defence/Appearance within the time required for so filing. Again, a standardised document is to be used.

Steps for Plaintiff and Defendant: Compulsory Mediation Conference

6. A Compulsory Mediation Conference is conducted in an effort to settle the Claim of the Plaintiff.
7. Following the Compulsory Mediation Conference a Judge will assess if the Plaintiff's Claim(s) has Merit, and similarly the Defence/Appearance has Merit.
8. If the claim is assessed to have merit an Order should then be made for a Directions Hearing with all the parties appearing to detail the "time frame" for the further dealing and listing of the matter for a Hearing.

Manner in which Proceedings are Conducted (Question 13)

There should be a legal obligation (in addition to those which already exist) requiring that civil proceedings are conducted in a manner which minimises cost and delay, Court time and get to the truth or the real issues in dispute.

The way to do this is to:

- establish a legal obligation to prove at the earliest point in time that the claim(s) have merit. This legal obligation should be imposed on:
    - initially, the lawyer/barrister who should give advice to a potential Plaintiff/Defendant that weigh up issues in relation to the Merit of a Claim and/or the Merit of a potential Defence/Appearance to a Complaint/Summons/Writ if issued.
    - Then, a Judge has the task of weighing up the claim and permitting the matter to proceed or not.
- Require that each party bear its own costs, unless at a Hearing a Court Orders Costs. This legal obligation is imposed on:
    - Each party and will encourage each party to any potential litigation to self evaluate the matter on legal advice.

Summary Judgment or Dismissal (Question 15)

The Pre-Issuing Procedure suggested above would address the matter of summary disposal (without trial) of civil proceedings.

Obtaining Information and Documents (Questions 16-17)

VALS argues there is need for reform of the rules about preliminary discovery, discovery from non parties, discovery of documents and interrogatories. VALS' suggested Pre-Issuing Procedure will go someway towards this. The Pre-issuing document of both the Plaintiff and Defendant will contain a list of all documents and evidence, facts that it is intended to be relied upon. Consequently, no one will be caught unawares as all is revealed and the truth is upfront. What is not disclosed in the Pre-Issuing documentation cannot be later disclosed and relied upon.

VALS argues that there is need for procedure rules permitting parties to require others (ie: Expert Witness) to attend, at a convenient place (other than the Court), to answer questions under oath. VALS suggests that during the Pre-issuing Procedure:

- Firstly, a witness (including Expert Witnesses) provides Confidential Reports in Affidavit form.
- Then, the Judge assesses the truth, merit, admissibility or otherwise of the Affidavit (ie: whether the witness is essential to a case and required to give evidence/produce documents at a Hearing).
- If the Judge determines that the witness should give evidence then such evidence can be given prior to a Hearing before the Judge. The witnesses would not be called unless specifically required by the Judge to satisfy questions or explain the material filed in support or opposition to the material filed by parties to the proceedings.

Also, VALS suggests that in light of problems (ie: cost, complexity) caused by a system that permits multiple expert witnesses, that the Court should appoint a single expert.[2] The expert will be independent and not called by either the Plaintiff or Defendant but by the Court. The expert will provide advice of general propositions.[3]

Expert Evidence (Question 18)

See above.

Alternative Dispute Resolution (Questions 23-25)

VALS argues that procedural changes should be implemented for the purpose of facilitating early settlement of civil claims. The Pre-Issuing Procedure, and Compulsory Mediation Conference (see above) should be introduced to discourage claims without Merit and discourage a Defence that have no Merit. The Pre-issuing

[2] Jacob, Sir Robin 'Standing Alone', Expert witness institute Newsletter, Spring 2000, p2 as at http://www.ewi.org.uk/files/NewsletterSpring2000.pdf
[3] ibid

Procedure is aimed to deter protracted legal proceedings and encourage early settlement. Pre issuing Procedure and early Mediation Conference should address the issue of how to facilitate early settlement of civil claims.

There is a need for Judicial Officers and Court Officers with appropriate legal training and qualifications to play a more proactive role in facilitating resolution of pre-trial issues without the need for hearings and judicial determination of such issues and early settlement of cases. VALS suggests that suitably qualified Court Appointed Officers/Court Appointed Judicial Officers are essential to minimise costs, reduce workload of judges, time Hearings take and internal paper work.

Time Limits (Questions 28-29)

VALS argues that all time limits should be examined and restructured. The comprehensive detailed Complaint/Summons or Writ be used at the Pre-Issuing Procedure stage would detail all times for filing, answering and complying with Directions Ordered.

Fees and Costs (Questions 52-61)

In each jurisdiction each party should bear their own costs, unless a Court at a Hearing Orders otherwise. This would encourage the parties to think carefully before proceeding beyond the Pre-issuing Procedure.

Conduct of Trials or Hearings (Questions 30-31)

VALS has the following suggestion for the conduct of Trials or Hearings:

- Hearings should be before a Judge alone (see below).
- The decisions made by the Court Appointed Officers should be available to the presiding Judge.

9. Enhanced access to legal representation through Civil Law Specialist lawyers being available at Courts and Civil Law Legal Aid funding increasing.

Self-represented Litigants (Question 33)

VALS suggests the following reform to deal with cases where parties do not have legal representation during the Pre-Issuing Procedure stage and Hearing stage:

- Court documents are written in simple English, standardized, yet detailed.
- Continuity of assistance from Specialist lawyers based at the Court from the earliest stage. This would go someway to the alleviating the following trends VALS has identified.
    - Private law firms are reluctant to take on Aboriginal clients who allege they have been assaulted by police on a pro bono basis. Instead they act for police who are steady paying clients (ie: alleged conflict of interest).

- Section 123 of the Police Regulation Act 1958 (a provision unique to Victoria).means that actions of Victoria Police are unlikely to receive scrutiny in the courts. The legislation is problematic in that it creates uncertainty and lawyers are reluctant to take on cases against the State. The existence of this law means that legal representation for people who have complaints against police is made even more important. The legislation creates immunity for members of the police force:
    - (1) A member of the force or a police recruit is not personally liable for anything necessarily or reasonably done or omitted to be done in good faith in the course of his or her duty as a member of the force or police recruit.
    - (2) Any liability resulting from an act or omission that, but for sub-section (1), would attach to a member of the force or police recruit, attaches instead to the State.

Legal Assistance (Question 51)

Arrangements for legal aid funding of civil cases do need reform. The importance of representation in civil cases can simply be related back to the principles of natural justice. An imbalance in representation poses difficulties for Judges (ie: delay).

Civil law legal aid funding is inadequate. VALS has one civil law solicitor to service the State which is inadequate in light of levels of legal need. VALS provides over 65% of the family law and civil law services required by Indigenous people in Victoria. These figures show that even though there are other services available, such as legal aid and community legal centres, Indigenous people still prefer to use VALS. A 1980 House of Representatives Inquiry found that Aboriginal and Torres Strait Islander Legal Services create a unique relationship of trust and cultural understanding with their clients that simply could not be emulated by a large, mainstream legal aid service. This relationship means that Indigenous people feel more confident with the legal system and are therefore more likely to access legal representation when they need it.

Civil law has become virtually unavailable through Legal Aid Offices or grants of Legal Aid (due to strain on resources, eligibility criteria, priorities for assistance). Community Legal Centres (CLCs) provide a range of civil law advice and education and policy but have limited scope to provide representation The Civil Justice Strategy and Senate Inquiries into Legal Aid have highlighted a shortage of legal aid resources in the area of civil law. Recommendation 27 of the 2004 Report of the Senate Inquiry into Legal Aid found calls for the Commonwealth Government to urgently increase the level of funding to Indigenous legal services in order to promote access to justice for Indigenous people. This is in line with recommendations in the Royal Commission into Aboriginal Deaths in custody. Also, the number of private lawyers doing civil law legal aid work is decreasing and they need to be encouraged to provide such assistance.[4] For every dollar invested in CLCs $100 may be saved by clients, Government and other affected parties. CLCs provide enormous value for money

[4] Dimos Dorra 'Civil Law Review' November 2003 (Legal Aid New South Wales) , Recommendation 3

with benefits to individuals and to society far outweighing the public funds CLCs spend.[5]

Civil law assistance is important for Indigenous Australians who experience disadvantage. Civil law remedies (ie: in relation to consumer, discrimination, and victim issues) are essential for Indigenous Australians who are vulnerable to their civil liberties being breached. For low income people civil law is often a critical means to defend their rights, protect their entitlements and preserve their level of family income. The economic impact on a low income family of a Centrelink mistake, a warranty dispute on a second hand car or an unfair dismissal matter can cause enormous economic stress. This can compound other stresses and affect the capacity to pay rent or fines which again create family stress and disruption. The failure by Governments to provide adequate funding and to develop effective policies for mainstream providers in the areas of civil law undermines the capacity of all Australians to seek civil remedies. The lack of an accessible service civil law service for low income people and Indigenous people in particular is even more reprehensible as the economic impact of civil law problems on these groups will be disproportionately greater. No matter how comprehensive civil laws may be in their legal coverage they are of little significance and use if those who seek recourse are unable to access the laws.

9. Amendments to the Wrongs Act 1958 (Vic) to change the percentage of injury required to meet the threshold level.

VALS argues that amendments to the Wrongs Act 1958 (Vic) should be introduced to change the percentage of injury required to meet the threshold level. Currently, the threshold requirement favours insurers at the expense of individuals.

[5] *Edgerton Nicholas, Partridge Emma* 'The Economic Value of Community Legal Centres 'Combined Community Legal Centres Group NSW and National Association of Community Legal Centres, *Institute For Sustainable Futures Uts 2006 a*s at http://www.naclc.org.au/

CONCLUSION

In order to meet objectives in the Consultation Paper there needs to be:

1. Substantive change

Reform that more substantive than simply incremental change is required.

2. Acknowledgement of the scope of exclusion the civil law system presents now

The Victorian Law Reform Commission should acknowledge the scope of exclusion the civil law system presents. There needs to be acknowledgement of the problem of unmet legal need, especially for disadvantaged groups, caused by various barriers.

3. Koori impact Statement: Consideration of the impact of reform on disadvantaged in order to address the current problem of unmet legal need and not further perpetuate this problem

Consideration should be given to the impact of reform on disadvantaged in order to address the current problem of unmet legal need and not further perpetuate this problem. A 'Koori impact statement' at an early stage in the development of major policy should be a part of the legislative process to help maximize the inclusion of a wholistic approach at the earliest stage possible rather than tacked on the end. The principle should be adopted that 'the least well resourced groups will be better off under the proposed changes', rather than just considering whether mainstream society will accept the change and cost issues.

4. Application of Principle 3: Danger of reform leading to more potential Disincentives to Access Civil Law

Specifically, the reforms relating to more procedural and economic disincentives to the pursuit of claims or defences without merit are in danger of having a detrimental impact on disadvantaged people. In order to prevent this consideration should be given to the problematic concept of merit in that it is not simply a technical or functional issue but one that exists in a specific historic and socio-economic context. Also, the importance of flexibility should not be overlooked in relation to reform, including the suggestions made by VALS (ie: Pre-issuing Procedure: via paper work and Pre-issuing Procedure: in person)

5. Adoption of Good Practice in Community Education

There needs to be a policy in relation to providing effective community education material, particularly to disadvantaged groups. A report entitled, Good Practice in Consumer Education for Indigenous People (2002)[6] identifies some of the issues and needs in relation to Indigenous Australian people and sets forth ten principles:

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[6] Renouf Gordon (2002) above n 1.

context, community involvement, resource limitations, diversity and knowledge, planning and evaluation, consumer's motivation, two way dialogue, appropriate format and distribution, long term projects rather than pilots, coordination, collaboration and networking.

6. Standardised, plain English and simple.

VALS identified the problem of cumbersome requirements that differ among jurisdictions. VALS suggested that standardised forms/rules that are uniform across jurisdictions and in plain English and simple should be introduced in relation to: rules of civil procedure, pleadings and fees and costs

7. Pre-Issuing Procedure

VALS identified the problem of delay and cost caused by the merit of applications not being assessed until the Hearing stage and methods of collecting documentation. VALS suggested that a Pre-Issuing procedure be introduced to determine the merit of an application (determined by a Judge after a Compulsory Mediation Conference) before proceeding to a Directions Hearing, and ensure all documentation is provided at the Directions Hearing. This suggestion relates to: what happens before proceedings are commenced, manner in which proceedings are conducted, summary judgment or dismissal and obtaining information and documents, expert evidence, alternative dispute resolution and time limits.

8. Legal representation

VALS identified the problems caused by lack of access to legal representation by Indigenous Australians in relation to civil law. VALS suggested access to legal representation should be enhanced by the introduction of Civil Law Specialist lawyers based at the Court and increase funding for Civil Law Legal Aid. This is relevant in relation to: *Self-represented Litigants*

9. Wrongs Act 1958 (Vic)

VALS identified the problem of the threshold requirement in the Wrongs Act 1958 (Vic) working to the advantage of insurers at the expense of individuals. VALS suggested that amendments to the Wrongs Act 1958 (Vic) that change the percentage of injury required to meet the threshold level should be introduced

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