Access to Justice
Productivity Commission
PO Box 1428
CANBERRA ACT 2601

Mr Julian Knight

Att: Dr Warren Mundy
Presiding Commissioner

8 May 2014

RE: ACCESS TO JUSTICE ARRANGEMENTS

Dear Commissioner,

I am writing to you in relation to the Australian Productivity Commission's Access to Justice Arrangements Issues Paper (September 2013) and Draft Report (April 2014).

I wish to submit the following comments for the Commission's consideration.

I am a 46-year-old prisoner serving a Life sentence in Port Phillip Prison at Laverton North in Victoria. I have been in custody since 1987.

I have appeared before courts and tribunals in relation to civil or administrative (i.e. judicial review) matters on 115 occasions since 1988: Magistrates' Court = 1, Supreme Court of Victoria = 91, Court of Appeal of Victoria = 4, Federal Court of Australia = 2, Federal AAT = 1, Victorian AAT/VCAT = 16. These appearances have related to more than 70 separate proceedings.

In 2004 I was declared a vexatious litigant in the Supreme Court of Victoria for a period of 10 years (Ref *Attorney-General (Victoria) v Knight* [2004] VSC 407. At the time I was declared a vexatious litigant for 10 years, instead of the usual declaration for life, I had 10 years left to serve of my minimum non-parole term. I was declared a vexatious litigant because of my litigation against the Victorian prison authorities during the period 2001-2004. I was the first prisoner declared a vexatious litigant anywhere in Australia over prison litigation. Only one other prisoner has been declared a vexatious litigant (Dennis Fritz in Queensland in 1987), but he was declared over litigation aimed at overturning his criminal convictions. The uniqueness of my situation has been commented on by Australia's leading authority on vexatious litigants, Dr Simon Smith of Monash University, and by the Parliament of Victoria's Law Reform Committee. I have attached two pages of extracts from the Committee's report for the Commission's reference.

I wish to point out that I have never had a proceeding struck out as being frivolous or scandalous, or as an abuse of process in the sense that the proceeding was an ancillary attack in relation to a separate proceeding. The only occasion when Corrections Victoria sought to have one of my proceedings struck out the application failed (see *Knight v Minister for Corrections* [2003] VSC 82).

I also wish to point out that, even though applications for leave by vexatious litigants are normally heard *ex parte*, I have *never* appeared unopposed by counsel for Corrections Victoria.

...2./

It should also be noted that Victoria has the worst record of prison litigation of any jurisdiction in Australia. Only two Supreme Court of Victoria proceedings against Corrections Victoria have succeeded in the past 30 years: *Castles v Secretary to the Department of Justice* [2010] VSC 310 & *Knight v Secretary, Department of Justice* [2012] VSC 613. I was the self-represented plaintiff in the second successful proceeding.

ISSUES PAPER

Vexatious Litigants

In response to the Commission's specific reference to vexatious litigants (Issues Paper, pages 19-20), I wish to make two points.

First, having someone declared a vexatious litigant in order to control their litigation actually has the perverse affect of *increasing* the amount of court time and resources that are consumed. As a vexatious litigant must obtain the leave of the Supreme Court to proceed with a proceeding, every proposed proceeding requires the hearing of an application for leave and the interlocutory hearings that accompany it. Then, if leave is granted, those series of interlocutory hearings accompany the eventual trial of the proceedings. I can see no reason why, instead of this existing form of "civil committal", the application for leave and the proposed proceeding be heard instanter. Courts of Appeal now regularly conduct both criminal and civil appeals in this manner. I can see no reason why the courts below cannot adopt a similar policy with respect to applications for leave.

Second, my experience has been that the staff of the Registry of the Supreme Court of Victoria – particularly the Prothonotary – have been of great assistance in assisting me to access the Court. The problem is, however, that a proceeding that would normally have been dealt with in around 3 months generally takes over a year to be finalized because of the intermediary step of the application for leave. The suggestion I have made above with respect to the hearing of applications for leave would address this issue.

Draft Recommendation 12.6

The relevant provisions in the *Supreme Court Act 1986* (Vic) concerning vexatious litigants are contained in section 21. Sub-section 21(2) provides that:

> **21. Vexatious litigants**
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> (2) The Court may, after hearing or giving the person an opportunity to be heard, make an order declaring the person to be a vexatious litigant if it is satisfied that the person has—
>
> (a) habitually; and
> (b) persistently; and
> (c) without any reasonable ground—
>
> instituted vexatious legal proceedings (whether civil or criminal) in the Court, an inferior court or a tribunal against the same person or different persons.

It has been my experience that the courts emphasize the first two criteria but overlook the third criterion. As outlined above, I have never had a proceeding struck out as being frivolous, scandalous or an abuse of process in the sense that it constitutes an ancillary attack. In a sense, *all* litigation is vexatious. I know of no defendant that enjoys being sued.

Disadvantaged Groups

With respect to unmet need and particular groups (Issues Paper, pages 10-11), I submit that the Commission should add prisoners to the list of those that 'more likely to experience legal problems and/or have more complex needs spanning criminal and civil issues.' The non-criminal legal areas that prisoners are most likely to be involved in are family law (i.e. child custody hearings), social security appeals, and immigration (i.e. deportation).

DRAFT REPORT

Draft Recommendation 10.1

The Victorian Civil & Administrative Tribunal (VCAT) began its existence in 1984 as the Administrative Appeals Tribunal (AAT). It was designed to provide a costs-free avenue of dispute resolution where legal representation was the exception not the norm. I have prosecuted 6 cases before the AAT/VCAT: 2 in 1994, 2 in 1995, 1 in 2002 & 1 in 2011: The VCAT has effectively become a quasi-court where legal representation and costs orders are now standard.

Information Request 12.6

I submit that the Commission should enquire as to what percentage of overall litigation is prosecuted by vexatious litigants. It is my belief that large corporations and other well resourced litigants conduct much lengthier, much more costly litigation in a single year, than every vexatious litigant in Australia combined over their lifetimes. By way of example, one instance of 'corporate duelling' in the Federal Court that concluded in 2007 used 120 court days over five years. The presiding judge stated: "In my view, the expenditure of $200 million (and counting) on a single piece of litigation is not only extraordinarily wasteful, but borders on scandalous" (*Seven Network Limited v News Limited* [2007] FCA 1062, 1064). This type of corporate litigation is commonplace but government complains (through the media) about the handful of individuals declared vexatious litigants. Are they serious?

Please note that my submission is a public submission.

Please also note that, as a prisoner, I cannot access the Commission's website so I would like to receive a hardcopy of the Final Report.

I hope that my comments will be of some assistance to the Commission.

Yours sincerely,

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JULIAN KNIGHT