

Access to the Law: The Cost of Litigation

Submitted 14 September 1990 to the Law Reform Commission of Victoria

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This informative Issues Paper from the Victorian Law Reform Commission identifies problems, lists options and presents a large number of questions for public debate. The HSV discussion group had the benefit of several learned and critical articles from the Law Institute, the press, our public speaker Jude Wallace, and Nick Renton.

HSV suggested modifications to the cost indemnity rule (loser always pays the winner's costs), supported the introduction of contingency fees but with strict safeguards against abuse of this system, simplification of court administration, advertising of lawyers' fees and specialisations, and the abolition of all anticompetitive practices. HSV also suggested a larger scope for trained paralegals.

We urged that a task force be established to provide a brief, coherent statute book in plain English, as directed by the Attorney-General, to deal with the present difficulties caused by the obscurity, complexity and inaccessibility of legislation. We stressed the wisdom and the necessity for State and Commonwealth legislation to be consistent and uniform. In this rapidly changing world precedent has a diminishing relevance. Where the wisdom of common law can still be applied, it should be codified and put on statute uniformly throughout Australia.

We agree with the statement of the International Jurists that this system of justice is "too slow, too expensive, too cumbersome and too formalistic". All initiatives to improve efficiency are welcome: fixed hearing dates, written briefs, submissions etc. Attempts at mediation should be a prerequisite to court cases; magistrates and lower courts should have higher jurisdiction. Legal practitioners should be accredited and accountable by means other than peer review. Many practices and traditions of the legal profession are a legacy of a bygone society and are now incongruous with modern life. Courts should be run by administrators and managers. Other issues were training of lawyers, legal insurance, stamp duty and filing fees.

ADDENDUM

In response to the HSV submission on "Access to the Law: The Cost of Litigation", HSV received a report of the VicStatutes Project from the Law Reform Commission of Victoria. It addresses one of the reasons for the high cost of litigation, namely the obscurity and inaccessibility of Legal Acts. The VicStatutes Project, now well advanced, will result in an updated and consolidated list of statutes to be available on CD-ROM; i.e., accessible on computer screens in a coherent form and within seconds. This will obviate the need for often lengthy and costly search and interpretation of Legal Acts. HSV congratulated the task force on this achievement.
