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By email: Mary.Polis@lawreform.vic.gov.au

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Dear Ms Polis

Civil Justice Reform

Consumer Action Law Centre (**Consumer Action**) is pleased to have the opportunity to submit its views on the second exposure draft of Victorian Law Reform Commission's (**VLRC's**) review of the civil justice system in Victoria. We apologise that we were unable to comment on the first exposure draft released. Where relevant, however, we comment on aspects of the first exposure draft in this submission.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign focused, casework and policy organisation. It was formed by the merger of the Consumer Law Centre Victoria and the Consumer Credit Legal Service in 2006, and builds on the significant strengths of these two centres.

Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

Summary

Consumer Action assists many consumers who interact with the civil justice system, primarily in "low value" dispute resolution forums such as the Magistrates' Court of Victoria, the Victorian Civil and Administrative Tribunal (**VCAT**) and industry-based external dispute

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resolution (**EDR**) schemes. We have limited dealings with other jurisdictions such as the Supreme Court of Victoria and the County Court of Victoria. As such, our comments relate primarily to the above "low value" dispute resolution forums. Considering this, we would like to make the following comments.

1. Consumer Action supports a number of VLRC's recommendation's:

   (i) The establishment of an interpreting fund to pay for interpreting services, the provision of free telephone interpreting services for *pro-bono* legal practitioners, and for the cost of interpreting services to be subject to party-party costs;

   (ii) The establishment of the Civil Justice Council;

   (iii) The establishment of the Justice Fund;

   (iv) Greater use of telephone and video conferencing;

   (v) Funding for a self-represented litigants co-ordinator;

   (vi) A requirement that legal practitioners certify the merits of applications (eg. complaints and defences);

   (vii) Implementation in the courts of a *pro-bono* referral scheme;

   (viii) Programs to assist self-represented litigants, including funding for courts to develop materials and programmes for self-represented litigants, and training for judicial officers and other court staff in relation to self-represented litigants;

   (ix) Funding for research into self-represented litigation in Victorian courts; and

   (x) Harmonisation and simplification of court rules.

2. Consumer Action has concerns with some of the suggestions and proposals in the second exposure draft. Consumer Action does not support:

   (i) Changes to the law that disadvantage self-represented litigants, for instance the requirement for a self-represented litigant to pay the costs of Special Masters appointed to assist them, and any extension of Supreme Court Rule 27.06 (or its Magistrates' and County Court equivalents) extending discrimination against self-represented litigants by allowing judicial officers to treat their applications differently from those of represented litigants;

   (ii) Giving a party to a proceeding (in practice a defendant) standing to bring an application to have another party declared a vexatious litigant; and

   (iii) Any expansion of the capacity of courts to make determinations on the papers.

3. Consumer Action makes a number of recommendations about matters which were not expressly considered in the second exposure draft. Consumer Action recommends:

(i) Although the VLRC excluded consideration of tribunals from its review,[1] the review should consider the civil justice process of the VCAT (particularly considering the VCAT is the busiest tribunal of civil disputes in the state, receiving 89,950 complaints in 2005/2006);[2]

(ii) That there be no legal costs awardable for very small claims of $1000 or less in the Magistrates' Court;

(iii) That the Form 4A Complaint in the Magistrates' Court be simplified and that all complaints served be accompanied by information detailing where consumers can find legal and interpreting assistance;

(iv) That, where appropriate, the courts encourage industry EDR schemes as a low-cost dispute resolution process;

(v) That businesses pay higher court fees than individuals to off-set the fact that they can claim legal costs as a tax-offset; and

(vi) Expansion of the capacity for courts and tribunals to facilitate *cy pres* type remedies and compensation orders.

1 (i) Establishment of an interpreting fund

Consumer Action supports the proposed introduction of a fund to meet the costs of interpreting services for civil matters in Victorian courts. Consumer Action frequently deals with consumers from non-English speaking backgrounds who are deeply disadvantaged by the civil litigation process. Funding for interpreters for these consumers will go a long way to redress this disadvantage. Consumer Action recommends that there be a rebuttable presumption that funding for an interpreter is available to defendants to proceedings in all cases. This presumption may be rebutted by evidence that the defendant has a certain level of financial means (ie. assets or income above a certain level).

Where interpreting services are provided to defendants, Consumer Action supports the proposal that the costs of interpreting services be recoverable by the interpreting fund from the plaintiff if the plaintiff is unsuccessful. Consumer Action does not support the ability of the interpreting fund to recover costs from an unsuccessful defendant, except as outlined above.

[1] Victorian Law Reform Commission, Civil Justice Review, Consultation Paper, 2006, page 5.
[2] Victorian Civil and Administrative Tribunal, Annual Report 2005/2006, page 4. (This compares with 75,050 civil actions in the Magistrates' Court, Magistrates' Court of Victoria, Annual Report 2005/2006, page 13.)

1 (ii) The establishment of the Civil Justice Council

Consumer Action supports the establishment of a new body called the Civil Justice Council which is to have responsibility for the review and reform of civil justice processes in Victoria. Consumer Action supports the proposal that the Civil Justice Council conduct research into self-represented litigation. Additionally, Consumer Action supports the establishment under the Civil Justice Council of a Costs Council to review legal costs.

Consumer Action believes that the Civil Justice Council should have a broad purview, and that its review and reform jurisdiction cover all civil disputes in Victoria, including those dealt with by VCAT. Considering that VCAT is Victoria's busiest tribunal in terms of the number of civil disputes, it would be an anomaly for VCAT to be excluded.

1 (iii) The establishment of a Justice Fund

Consumer Action supports the establishment under the Civil Justice Council of a Justice Fund to meet the cost of public interest civil litigation of a class or representative action nature. We also believe that the Justice Fund could be used to support non-representative public interest litigation. Often the requirement to identify a class may mean that representative action is not pursued, despite there is a public interest issue to be addressed. Further, public interest litigation can arise in the context of a single applicant or defendant.

Consumer Action takes the view, however, that failing to fully indemnify the assisted party against adverse costs orders would in large part defeat the purpose of the Justice Fund. Adverse costs orders can be high, and the risk that they succeed the Justice Fund's cap on liability would mean that litigation would not be pursued. One partial solution to this would involve legislative change to enshrine common law principles relating to costs orders in public interest litigation. While the normal rules that costs follow the event is not altered merely by the fact that the litigation may be called 'public interest litigation', there are a number of factors that are generally considered by a court or tribunal in making costs orders[3]:

- the extent to which the plaintiff and defendant were successful in the action;
- where the plaintiff is an individual, whether he or she had any personal, private or financial gain to make from the litigation;
- where the plaintiff is an association, whether its objects have a public character, and whether the litigation was pursued in accordance with those objects and for the purpose of fulfilling them;
- whether there was widespread public interest in the litigation and its outcome, or the case was otherwise designed to effectuate important public policies;
- whether, if the plaintiff had succeeded, numerous people would have benefited from the action; and
- whether the plaintiff would have had sufficient economic incentive to file suit even had the action involved only narrow issues lacking general importance.

[3] See *Plumb v Penristh City Council* [2003] NSWLEC 161.

Where these factors exist, costs incurred have been described as incidental to the proper exercise of public administration, and so ought not to be wholly a burden on the particular litigant.[4] So as to create certainty for applicants considering public litigation, and so as to limit the potential liability of the Justice Fund, we believe that these principles should be enshrined in legislation.

Another option is for there to be a presumption that the costs claimable by a successful defendant are limited to the capped costs, unless that defendant can show that further costs (still calculated on a party-party basis) were: 'necessary, proportionate to the nature of the claim, reasonably incurred and not incurred due to the defendant's lack of good faith'.

1 (iv) Greater use of telephone and video conferencing

Consumer Action supports the use of telephone directions hearings, and supports the further use of telephone and video conferencing generally. Allowing litigants to participate in directions hearings by telephone will significantly reduce legal costs as solicitors will not need to devote an entire day or morning to the directions hearing. Court rules should establish telephone directions hearings as the default hearing type, and in-person directions hearings should be required only where personal attendance in the court is needed for a particular reason.

In addition, Consumer Action believes that VCAT should be required to more actively use telephone and video conferencing. VCAT acknowledges on its website that telephone and video conferencing hearings are not easily granted, and that any costs involved must be borne by the applicant.[5] Consumer Action's clients have often had to travel some distance to Melbourne to attend hearings, which not only involves significant costs but acts as a significant disincentive against pursuing a claim. VCAT's credit list does not hold hearings outside of Melbourne, while the civil claims list's circuit is limited.

1 (v) Funding for a self-represented litigants co-ordinator

Consumer Action supports the presence of a self-represented litigants co-ordinator in the Supreme Court. Consumer Action recommends all Victorian courts and VCAT introduce a self-represented litigants co-ordinator as soon as possible.

Consumer Action is keen to ensure that the individuals chosen to be co-ordinators are sufficiently experienced to be able to respond to the needs of self-represented litigants, be those legal or inter-personal.

1 (vi) Requirements that legal practitioners certify the merits of applications

Consumer Action supports the requirement for legal practitioners to certify the merits of any interlocutory application before they are able to issue it. Such a requirement reduces the likelihood of abuse of the civil justice system by way of issuing interlocutory motions that increase delay.

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[4] *Oshlack v Richmond River Council* (1983) 193 CLR 72 at 124 per Kirby J.
[5] See "Civil Disputes: Hearings" on www.vcat.vic.gov.au.

Consumer Action recommends that Victorian law require legal practitioners to certify the merit of any claim or defence they wish to file. This would be consistent with the legal professional rules in NSW that require a practitioner to certify that there are reasonable prospects for success of the claim or defence.[6]

The imposition of a requirement to certify merit would reduce the number of unmeritorious claims in the system. Certification requires the signing of an official document, and this process would tend to remind legal practitioners of their duties. It would also make it easier to pursue disciplinary action against legal practitioners who repeatedly file court documents containing unmeritorious claims and defences.

As outlined in our original submission to the VLRC, Consumer Action is increasingly concerned that the Magistrates' Court has become a "debt recovery factory". We are aware of complaints being lodged by debt collectors which show no evidence of a debt. Additionally, we are concerned that some complaints continue to be lodged despite involving statute-barred debts. Since *Collection House v Taylor*,[7] collection of statute-barred debt is deemed to be unconscionable conduct. We believe that a positive obligation on solicitors to certify merits of claims and defences would contribute to ensuring claims and defences have a basis before being issued.

1 (vii) The implementation in the courts of a *pro-bono* referral scheme

Consumer Action supports the establishment of a *pro-bono* referral scheme in all Victorian Courts and VCAT. Consumer Action supports both the existence of a formal system of referral,[8] and an ad-hoc system of referral administered by the self-represented litigants co-ordinator. Consumer Action notes that the Supreme Court of Victoria's *pro-bono* referral scheme has received early support.[9] We encourage the scheme, when established, to make links with relevant existing organisations such as the Public Interest Law Clearing House.

1 (viii) Programs to assist self-represented litigants

Consumer Action supports the appointment of Special Masters for cases involving self-represented litigants so long as the cost of these Special Masters is not borne by self-represented litigants (see below).

Consumer Action supports the provision of extra resources to fund the publication of material for self-represented litigants.[10] Consumer Action supports the provision of extra resources to fund training of judicial officers and other court staff. There is widespread misunderstanding of, and prejudice against, self-represented litigants both inside and outside legal circles. The prejudiced perception of self-represented litigants can be seen in the second exposure

[6] *Legal Profession Act 2004 (NSW)*, section 347.
[7] [2004] VSC 49 (3 March 2004).
[8] Similar to Order 80, rule 4, *Federal Court Rules*.
[9] John Corker, Funding Litigation: The Challenge, 24th AIJA Annual Conference, 15-17 September 2006, Adelaide.
[10] Particularly useful would be information kits, and kits that make it easier for self-represented litigants to conduct their own litigation.

draft,[11] and even more markedly in the wider legal fraternity, where self-represented litigants are viewed as somehow deficient.[12] While Consumer Action supports guidelines for lawyers dealing with self-represented litigants, these guidelines must not perpetuate the prejudiced and inaccurate stereotypes that exist. The judiciary and court staff need to accept that self-represented litigation is here to stay, forms a substantial percentage of civil proceedings,[13] and is due primarily to individuals' lack of funds to pay lawyers combined with a lack of public funding to low-income earners for civil litigation.

Consumer Action supports the establishment of self-represented litigant management plans by the courts.

1 (ix) Funding for research into self-represented litigation in Victorian courts

Consumer Action strongly supports funding through the Civil Justice Fund for additional research on self-represented litigants. Consumer Action is of the view that objective research will dispel many of the inaccurate perceptions held about self-represented litigants.[14] In particular, Consumer Action would like to see funding of research into the way judicial officers and court staff interact with self-represented litigants to determine whether this causes disadvantage to the cases of self-represented litigants. Such research could usefully consider outcomes in forums where self-representation is commonplace, and perhaps even mandated, such as the civil claims list of VCAT.

1 (x) Harmonisation and simplification of court rules

Consumer Action supports moves to review and redraft court rules and forms. Consumer Action agrees that court rules should be made simpler and use plain English. Consumer Action makes specific recommendations in relation to the form of court documents (particularly the Form 4A Complaint) below.

2 (i) Changes to the law that disadvantage self-represented litigants

The second exposure draft suggests that Special Masters be appointed to cases in which a party is self-represented. Consumer Action supports this. The second exposure draft suggests that costs of Special Masters should be 'costs in the cause'. In our view, this will disadvantage self-represented litigants.

Self-represented litigants should not be discriminated against (by facing the risk of increased costs) purely on the grounds that they have not retained a legal practitioner. It is not just or equitable to impose a requirement on self-represented litigants that a Special Master be present, and then make them pay for this master if they are unsuccessful. Costs for Special Masters for self-represented litigant cases should be funded through the court, not paid for by the parties.

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[11] For instance, viewing them as "security issues" in the proposals in paragraph 2.1.5 of the review.
[12] Associate Professor Duncan Webb, University of Canterbury, *The right Not to Have a Lawyer*, Conference on Confidence in the Courts, Canberra, 9-11 February 2007, page 6.
[13] 31% of Federal Court matters (Shaw, J.W., Judge of the Supreme Court of New South Wales, *Self-Represented Litigants,* Address to the conference dinner of the Consumer, Trader and Tenancy Tribunal, Sydney, 20 November 2003).
[14] For example, the view that their claims are unmeritorious and that they are mentally ill.

Consumer Action believes that applying different rules to parties that have legal representation and self-represented parties is unjust. In particular, the 'practice' of the prothonotary of the Supreme Court refusing to seal an originating process brought by a self-represented litigant is, in our view, discriminatory. Any decision to require a court document to be reviewed by a Registrar or Judge before filing should be made on the basis of Rule 27.06,[15] namely where it appears that the document is irregular or an abuse of process, not on whether the applicant has a lawyer or not. Subjecting self-represented litigants to more onerous obligations would engender an institutional bias that views the retention of legal representation as a quasi-obligation.[16]

Consumer Action does not support the prejudicial application of Rule 27.06 and does not support the extension of this rule in any way.

Consumer Action supports the proposal made in Western Australian that a manual be compiled for court staff and that specific guidelines be given to the judiciary to assist them in dealing even-handedly with self-represented litigants.[17] Consumer Action takes the view that the way judicial officers and court staff interact with self-represented litigants should be reviewed to ensure that these litigants are dealt with fairly.

2 (ii) Giving a party to a proceeding standing to bring an application to declare another party a vexatious litigant

Consumer Action does not support the proposal to change the law to allow a party to a proceeding (typically a defendant) to make application to declare another party a vexatious litigant. The current law giving the Attorney-General standing to make an application is appropriate. Consumer Action opposes any change that would give standing to private parties, or to 'persons who have sufficient interest in the matter'.

If private parties were allowed to make applications to have another party declared a vexatious litigant, they may use this as a procedural weapon. This is the case especially if, as is suggested, an application to declare a party a vexatious litigant stays proceedings and prevents the party against whom the application is made from initiating new proceedings.

Consumer Action does not support the extension of vexatious litigant orders to persons 'acting in concert'. The purpose of vexatious litigant laws is to prevent the repeated filing of unmeritorious claims. The purpose is not to prevent people communicating with one another, even if that communication amounts to encouraging vexatious litigation. It is our view that section 6 of the Queensland Act[18] is too broad, including as it does a person who is not a vexatious litigant but who is acting in concert with one.

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[15] *Supreme Court (General Civil Procedure) Rules 2005 (Vic)*
[16] Corker, above n 9, page 6.
[17] Law Reform Commission of Western Australia, *Review of the Civil & Criminal Justice System in Western Australia*, Consultation Papers, June 1999, 2.10, page 557.
[18] *Vexations Proceedings Act 1995 (Queensland)*.

2 (iii) Expansion of the ability of courts to make determinations on the paper

Consumer Action does not support any changes that would allow determinations to be made on the papers (unless all parties to the proceeding consent to this). As outlined in our original submission to the VLRC, the default judgment facility in the Magistrates' Court can already cause significant detriment to consumers, and it is not in the interests of consumers (or of justice) to allow more determinations to be made on the papers.

Consumer Action's legal practice frequently sees clients who have had a default judgment made against them in the Magistrates' Court. In some of these cases, the amount of debt claimed in the default judgment is more than the amount of debt the consumer actually owes. In a few cases, the consumer never had a contractual relationship with the claimant (and therefore the consumer does not owe any debt) but nonetheless a default judgment has been entered against that consumer. Typically, this occurs where a debt is sold. The sale of debt is a common transaction which produces a number of errors and anomalies. Debts that have been repaid are sometimes sold and pursued, inadequate information is given to the buyer so that the buyer pursues the whole of the debt notwithstanding that the consumer has repaid a substantial portion of it. Sometimes, debt collectors initiate proceedings (and attain default judgments) against parties who have the same name as the debtor, but who have never had any dealings with the creditor.

These factors, together with the fact that no proof of debt (and in too many cases, no proper pleading) is required before default judgment is entered, means there is inadequate examination of the merits of the claim, and that many baseless proceedings are initiated in the expectation that no defence will be filed. To expand this in any way would increase the number of unmeritorious claims being made.

3 (i) The review should consider the civil justice process in the VCAT

As noted above, the VCAT is the busiest forum for civil disputes in Victoria. To exclude the VCAT from the review will lead to a serious gap. For this reason, Consumer Action recommends that the VLRC include the VCAT in its review of civil justice.

3 (ii) A presumption that no costs are recoverable for very small claims

Consumer Action recommends that for small claims of $1000 or less in the Magistrates Court, the rules be changed so that there is a presumption that each party bears its own costs.

Consumer Action is aware that for claims of less than $500, costs are not awarded in the Magistrates' Court unless there are special circumstances.[19] This limit has remained unchanged despite several increases in the upper limit of the Court's jurisdiction. It is also Consumer Action's experience in the Magistrates' Court that costs for claims of less than $500 are awarded as a matter of course where a claim is undefended. Undefended claims give rise to the lease actual cost on the part of the plaintiff and cannot constitute any

[19] *Magistrates' Court Act 1989 (Vic)*, section 105 (1).

reasonable interpretation of 'special circumstances'. This anomaly needs to be addressed as a matter of urgency.

Small claims should be dealt with on a no-cost basis whether they are defended or not. The legal costs of small claims are unjustified in comparison with the amounts of the claims. In many instances, costs exceed the amount of the claim and result in consumers paying substantial legal bills.

For example, Consumer Action's legal practice represented a client who did not fully understand English, who had a complaint against her issued claiming a $300 debt, and who was required to pay $293 costs in a default judgment. Failing to understand the nature of the judgment and the direction to pay, our client did not pay and the plaintiff took further action to enforce the claim, and legal costs skyrocketed. A warrant for seizure and sale of this client's home was made to satisfy the amount of $2,315.20. Thus, a $300 claim can lead to legal costs of $2000 under the present system.

Consumer Action recommends the no-cost cap be increased from $500 to $1000. Consumer Action recommends the Magistrates' Civil Procedure Rules be changed to place it beyond doubt that where a complaint is undefended, legal costs are not recoverable unless special circumstances warrant it. There is a pressing need to move away from the current practice in the Magistrates' Court of granting costs for small claims that are undefended.

3 (iii) Simplifying the Form 4A Complaint and providing accompanying information

Form 4A is a confusing and uninformative document that favours plaintiffs and makes it more likely that default judgment will be entered. Form 4A gives defendants no information about where to find legal assistance, or how to get language assistance such as interpreting.

Consumer Action recommends that the Magistrates' Court complaint process be reviewed.

In particular, Consumer Action wants to ensure that whenever a Form 4A Complaint is served, an information document is served with it that contains information about obtaining interpreting and legal assistance. Requiring this information to be served would reduce the number of default judgments for unmeritorious claims against vulnerable Victorian consumers. Victoria Legal Aid (**VLA**) has produced publications that contain excellent information, and Consumer Action suggests that in the short-term, an extract of VLA's publication[20] (see Appendix 1) be served with all complaints.

Failure to require the service of information about how to get assistance is a serious oversight.

[20] Victoria Legal Aid, *Falling on hard times: A guide for people in debt*, 12th Ed, October 2006, page 28.

3 (iv) Courts should encourage industry EDR schemes

Many Victorian industries have industry-based EDR systems.[21] In Consumer Action's experience, these systems are, in general, an extremely effective means of resolving disputes in a non-litigious and equitable manner.

Currently, if litigation is on-foot, EDR schemes refuse to investigate a dispute. However, businesses that are members of these schemes are prevented from taking court action where a consumer has brought the matter to the scheme.

This can result in an arbitrary and anomalous 'race to issue' with the consumer seeking to contact the EDR scheme before the trader issues a complaint.

Consumer Action recommends that in relation to consumer claims where the plaintiff is a member of an industry EDR scheme, attempting to conciliate the claim by the EDR process be made a precondition to filing a complaint. Consumer Action recognises implementing this recommendation may involve complexities, and wishes further consultation about the matter to be made with all stakeholders.

3 (v) Businesses should pay more to issue claims

Consumer Action recommends that court fees in all Victorian courts should be changed so that complainants or defendants that are businesses must pay a higher fee than individuals. This would off-set the tax advantages businesses have of being able to use legal costs as a tax write-off.[22] Requiring businesses to pay a higher court fees would help to create a more level playing-field.

3 (vi) *Cy pres* remedies compensation orders

We note that the VLRC's first exposure draft had a significant discussion of *cy pres* type remedies which was not replicated in the second exposure draft. Consumer Action strongly supports the introduction of clear judicial powers to make *cy pres* type orders.

Cy pres is a legal doctrine meaning "as near as possible" and in effect it enables compensation to be aggregated and refunded to a cause that relates to the needs of the affected persons generally. In this way, compensation is achieved without requiring inefficient processes to identify and refund every affected person.

In consumer law, there are often effective processes to seek compensation as a result of market conduct. However, consumers who have suffered loss may be difficult to identify in some cases, or the losses to each individual may be too small to justify the administrative cost in delivering the remedy. It is nevertheless undesirable that the wrongdoers should profit from its misconduct or that there should be a loss to consumer welfare in these circumstances. A *cy pres* solution can help overcome this problem.

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[21] There are many industry external dispute resolution schemes. They are set out in Appendix 2 (Elements of Industry External Dispute Resolution Schemes (EDR)).

[22] Law Reform Commission of Western Australia, *Review of the Civil & Criminal Justice System in Western Australia*, Final Report, September 1999, Recommendation 9, page 342.

We have direct experience of this mechanism being used in Australia. In the late 1980s, the Consumer Credit Legal Service in Victoria objected to the licensing of a large finance company on the ground that the company was engaging in dishonest and unfair selling practices in relation to consumer credit insurance. The circumstances of the case made it impossible to identify (for the purpose of compensation) every single consumer who may have been wronged by the finance company. The solution was to compensate consumers at large under the doctrine of *cy pres*. The *cy pres* solution resulted in the finance company paying $2.25 million into a fund to establish a centre that would advocate for, and work in the interests of, Victorian consumers. Accordingly, the Consumer Law Centre Victoria (CLCV) was established in 1992. The CLCV (which merged with CCLS to form Consumer Action in 2006) became a highly respected and influential voice in the consumer policy arena, both at a governmental level, and throughout the community generally. In 2001 it started a successful consumer litigation practice to further help it seek redress for disadvantaged consumers. This clearly demonstrates the benefits of being able to seek compensation for consumers under a *cy pres* mechanism.

Conclusion

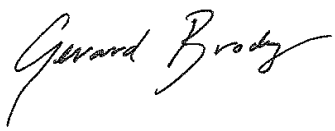
Consumer Action welcomes the review of civil justice, and supports many of the recommendations made by the VLRC. However, Consumer Action is particularly concerned with aspects of the second exposure draft. Any extension of the power of courts or tribunals to make final determinations in the absence of parties will exacerbate the problem of courts serving as 'debt collection mills' to the detriment of consumers.

The second exposure draft expresses an institutional bias against self-represented litigants that does not promote justice. It must be recognised that self-representation will continue to be a major form of representation in civil trials (and not because self-represented litigants are difficult or vexatious, or otherwise deficient).

Consumer Action hopes that the VLRC will also consider the positive recommendations in this submission, including in relation to Form 4A complaints, industry EDR schemes and costs.

Should you have any questions about this submission, please contact us on 03 9670 5088.

Yours sincerely
CONSUMER ACTION LAW CENTRE



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