



**CONSUMER LAW CENTRE
OF THE ACT**

Submission responding to:

Inquiry into Access to Justice

Care Inc Financial Counselling Service
and the Consumer Law Centre of the ACT

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30 April 2009

About Care Inc. and the Consumer Law Centre

Care Inc. Financial Counselling Service (Care) has been the main provider of financial counselling and related services to low income and vulnerable consumers in the ACT since 1983. Care's core services include the provision of information, counselling and advocacy to residents in the ACT and the surrounding Queanbeyan region in the NSW experiencing problems with credit and debt. Care also runs a Community Development, Education and Research program and the ACT's only No Interest Loans Scheme.

The Consumer Law Centre of the ACT (CLC) is a project of Care offering legal assistance and advice to consumers on low to moderate incomes, mainly in the areas of consumer credit, telecommunications and utilities, general fair trading law and consumer protection.

Care responds to over 2000 new requests for assistance every year across its programs. In addition to casework, Care and the CLC work hard to advocate on behalf of the ACT's consumers, providing policy comments on issues of significance to its client group and striving to improve legal protection and awareness of consumers' rights in the ACT.

Care receives funding from a variety of contributors, and specifically acknowledges the funding that it receives from: ACT Government, the Department of Disability, Housing and Community Services and the Department of Justice and Community Safety; the NSW Financial Counselling Trust Fund administered by the Office of Fair Trading; and the Commonwealth Financial Counselling Program administered by the Department of Family and Community Services.

Inquiry into Access to Justice

Care and the CLC would like to express our support for this inquiry, and its focus on adequacy of resources for community sector organisations and legal aid centres and the accessibility of services provided to the public, especially the most vulnerable and disadvantaged members of our society.

There have been a number of recent and sometimes overlapping inquiries and reviews concerning access to justice and funding in 2004 and 2005, with many important recommendations still not having been implemented. These are discussed in a submission to this inquiry made by the National Association of Community Legal Centres (NACLC).

Due to our limited resources we are unable to provide a comprehensive submission to this inquiry. However, as a member of the NACLC, the CLC would like to endorse the NACLC submission to this inquiry.

Finally, we note that while Care is funded by the ACT, NSW and federal governments the CLC is funded solely by the ACT Government. The CLC is thankful for the ACT Government's commitment to its continued existence and support.

Rather than addressing individually the terms of reference, below we have provided a general comment in relation to provision of legal services by the CLC and its difficulties in ensuring effective service delivery and access to justice for its clients.

Legal service provision by the CLC to ACT consumers

As noted earlier, the CLC provides free legal assistance and advice to consumers on low to moderate incomes in the area of consumer credit, telecommunications, utilities, general fair trading law and consumer protection. The centre also works to improve legal protection for consumers and to raise awareness and understanding of consumers' rights in the ACT.

The centre operates as a sole-solicitor practice with a paralegal assistant working two days per week. To our knowledge, we are the only legal service provider specialising in consumer protection providing free legal advice in the ACT.

While the CLC is funded entirely by the ACT Government and provides assistance only to the ACT residents, we provide legal advice, representation and advocacy in matters involving application of federal laws and regulators. For instance, a large part of our work

involves dealing with matters involving Part 2 Division 2 of the Australian Securities and Investments Commission (ASIC) Act dealing with 'unconscionable conduct', 'consumer protection' and 'conditions and warranties in consumer transactions' as well as the Trade Practices Act.

With the Commonwealth Government's newly assumed responsibility for consumer credit and 'Australian consumer law' consolidating the fair trading/trade practices legislation, the overwhelming majority of the CLC's workload will now relate to the application of federal law.

General comments on the terms of reference

In the ACT, the ability of people to access legal representation in matters involving consumer law is very limited. As previously noted, the CLC is the main provider of legal services in the consumer protection area. Due to our limited resources, the CLC only provides assistance via referrals from Care counsellors or other legal service providers and legal practitioners. While this is an important screening tool for the CLC to ensure that only the most urgent matters are given priority, it is a significant barrier to access by the general public.

The CLC does not have sufficient office space or funding to accept volunteer assistance or to contemplate employing a second solicitor, whether on a volunteer or paid basis, regardless of the growing need for service delivery in this area, as discussed below.

The inadequacy of legal aid and the cost of delivering justice are also significant barriers to the ACT's consumers. It is important to stress that consumer law is different to fields in which other community legal centres operate. Commercial matters are often complex and time consuming. The opposing parties are often financial institutions, insurance companies and large corporations that are well resourced and employ large legal firms which adopt a highly adversarial approach to dispute resolution.

This power imbalance is exacerbated by the fact that the CLC has no funding to help clients obtain counsel opinion, expert reports, pay for court filing fees or brief counsel to appear in court. The only funding available to our clients is provided on a case-by-case basis by Legal Aid ACT, subject to its limited resources.

Because of this imbalance, the CLC's focus is predominantly on non-adversarial dispute resolution and seeking recourse from the regulators. While this method may often lead to positive outcomes for our clients, those clients whose interests can be protected only via litigation are usually disadvantaged.

There is also an overwhelming demand on the CLC to extend its services to providing community legal education as well as outreach services to those most disadvantaged in our community: the elderly, the disabled, persons from an Indigenous background and other population groups that may be best accessed via outreach services. We note that Indigenous consumers, older people and people suffering from a disability are significantly under-represented in the CLC's and Care's client base, despite our efforts to extend our services to make them more accessible to these client groups.

The CLC would like to offer these services as part of its core functions in order to provide more holistic assistance to its client base.

The growing need

The current global financial crisis and forecasts of an associated rise in unemployment have, and are likely to continue to, lead to a surge in demand, proving a significant challenge for the CLC in providing an effective service.

The CLC anticipates that many issues raised above are similar to other service providers offering legal advice and representation in the area of consumer law across Australia.

Access to legal services to ACT consumers would be greatly enhanced through a boost in funding to the CLC to:

- explore solutions to space shortages in our current premises and thereby make better use of volunteer resources

- expand the role of support staff for the CLC by addressing the need for a full-time paralegal staff member
- give consideration to the future growth of the service including employing an additional solicitor to meet demand for our services
- provide outreach services, especially to disadvantaged groups such as Indigenous people, the elderly and the disabled
- extend its services to the general public (rather than by direct referral)
- provide more extensive community legal education, and
- increase our advocacy and research in areas currently undergoing significant reform, including the area of consumer credit and Australian consumer law.

Concluding comments

There exist significant barriers preventing access to justice faced by consumers in Australia, with those on low incomes or coming from vulnerable backgrounds being most disadvantaged. Factors such as lack of awareness of legal rights and education, access, and resources to pursue their rights via litigation all play a part.

The limited access to justice by consumers is further compounded by the dearth of consumer law services as well as financial counselling services, which are often overstretched and working beyond their capacity.

In addition, the current economic crisis is likely to have a significant impact on both the level of demand for the services provided by financial counsellors and consumer law advocates and the complexity of the issues presented by consumers.

Care Inc and the CLC are hopeful that this inquiry will lead to positive outcomes and provide greater access to justice for consumers, including our client group, and especially those most disadvantaged and vulnerable in our community.