

Federation of  
Community Legal Centres  
VICTORIA

**The Hon. Rob Hulls MP**  
Attorney General  
Level 3, 1 Treasury Place  
East Melbourne Vic 3002

22 April 2010

***One VCAT: President's review of VCAT***

Dear Attorney-General

I am writing on behalf of the Civil Law Working Group of the Federation of Community Legal Centres, regarding Justice Kevin Bell's report, *One VCAT: President's Review of VCAT*.

The Working Group strongly endorses the report and recommendations, which if adopted will enhance access to justice and benefit many community legal centre clients. We congratulate the Government on initiating this important review.

**Support for self-represented litigants**

We endorse Justice Bell's recommendations regarding self-represented litigants (recommendations 62 to 66). Community legal centres (CLCs) often cannot represent their clients in civil matters, due to lack of resources. This means that many of our clients are forced to present their own cases in courts and tribunals.

We particularly welcome Justice Bell's proposal to enhance the powers and duties of the principal registrar, to afford greater assistance to self-represented parties. This would be especially useful to parties from culturally and linguistically diverse (CALD) communities. Without proactive assistance, these parties may not be aware that duty lawyers, interpreters and other support services are available.

We would also welcome the opportunity to provide more legal services to self-represented parties. This could be through a dedicated self-representation civil law service, as proposed by Justice Bell, or through our existing generalist and specialist CLCs.

**An appeal tribunal**

We also strongly support recommendation 39, regarding the creation of an appeal tribunal within VCAT. CLC clients generally engage in disputes over small amounts of money. These matters often do not warrant the cost and complexity of a Supreme Court appeal. The amounts in question are, nevertheless, very significant for our clients. The opportunity to seek internal review, in certain circumstances, would significantly improve access to justice for CLC clients.

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### **Importance of adjudication and legal representation**

We welcome Justice Bell's remarks about the complementary functions of adjudication and ADR. We believe that, in certain cases, adjudication is uniquely effective in exposing systemic injustice and driving progressive law reform. It is important that parties have ready access to an adjudicated decision where there is a question of law to be resolved, or a public interest issue that requires public scrutiny.

We strongly endorse recommendation 67, that there be no further restrictions on the right to legal representation at VCAT. It is vital that lawyers are able to represent their clients in appropriate cases, particularly in cases that concern fundamental human rights issues.

### **Alternative dispute resolution**

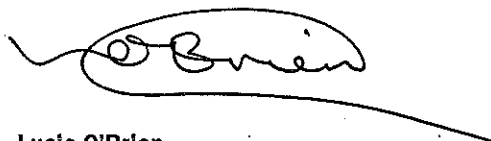
While we are generally in favour of ADR, some matters are inherently unsuited to it, due to irremediable power imbalances or the 'all or nothing' nature of the dispute. A dispute between a tenant and the Director of Housing is a good example. In disputes of this nature, there is very little scope for negotiation, as the only possible outcomes are eviction or continuation of the tenancy. If a tenant has an arguable case, we believe that he or she should be able to seek a determination according to law.

In many cases, legal representation can mitigate power imbalances and help parties make informed choices. However, since many CLCs cannot represent clients in ADR, additional safeguards are necessary to ensure fair outcomes for these people.

We agree with Justice Bell that ADR must be regularly monitored and evaluated (pp 35-36). We applaud VCAT's innovations in this regard, particularly its experiments with mandatory ADR report forms and party satisfaction surveys.

Once again, congratulations on the release of this valuable report.

Sincerely

A handwritten signature in black ink, appearing to read 'O'Brien', with a long horizontal flourish extending to the right.

**Lucie O'Brien**  
Policy Officer