Federation of
Community Legal Centres
VICTORIA

Ms Sabina Wynn
The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

By email to discovery@alrc.gov.au

20 January 2011

Discovery in Federal Courts inquiry

Dear Ms Wynn

The Federation of Community Legal Centres (Vic) welcomes this opportunity to comment on the inquiry into discovery in Federal Courts.

The Federation is the peak body for over fifty community legal centres (CLCs) across Victoria. The Federation leads and supports CLCs in pursuing social equity and access to justice.

The Federation:

- provides information and referrals to people seeking legal assistance;
- initiates and lobbies for law reform to develop a fairer legal system that better responds to the needs of the disadvantaged;
- works to build a stronger and more effective community legal sector;
- provides services and support to CLCs; and
- represents CLCs' priorities and interests.

CLCs are independent community organisations. They draw on the work of volunteers to provide free legal services to the public. CLCs provide free legal advice, information and representation to more than 100,000 Victorians each year.

Introduction

We endorse the submission to this inquiry from the Public Interest Advocacy Centre Ltd (PIAC). While we are not making a formal submission, we make the following brief comment. The Federation acknowledges the assistance of our member centres, particularly the Consumer Action Law Centre and the Springvale Monash Legal Service in the preparation of these comments.

1. Discovery practice and procedure: proposals 3-1 and 3-2 (pre-discovery preparation and conference)

Unrepresented or represented individuals who are involved in proceedings against large entities (whether private or public) are often at a disadvantage at this stage of civil litigation. Disadvantage may occur when a large entity holds all the documents relevant to the dispute and takes extensive measures to avoid disclosure. In these instances, applying for and proving a need for discovery will necessarily be borne by

Level 3
225 Bourke Street
Melbourne
Victoria 3000

Tel: 03-9652 1500
Fax: 03-9654 5204
administration@fclc.org.au
www.communitylaw.org.au

Federation of
Community Legal Centres
(Victoria) Inc
Registration A0013713H
ABN 30 036 539 902

the individual in the dispute. In effect, the requirement for pre-discovery conciliation or filing written statements may mean the individual is negotiating in a vacuum because they do not know what documents the large entity holds. It is often the case in these situations that learning about the existence of certain documents only then leads to the knowledge that other documents also exist.

This proposal is therefore appropriate for litigation where both parties are large entities but not for the smaller number of matters involving an individual engaged in a dispute with a large entity. The Federation therefore submits that there should be a provision to waive these requirements for matters involving unrepresented and impecunious litigants as well as in public interest cases.

2. Discovery practice and procedure: proposal 3-6 (judicial education)

We submit that there should also be an emphasis on training that promotes an awareness of self-represented litigants and individuals as litigants generally, and the difficulties and costs they experience in obtaining documents from some large entities.

3. Alternatives to discovery: proposal 5-1 (pre-action protocols)

The Federation endorses PIAC's concern that pre-action protocols may increase the costs and complexities of litigation for unrepresented litigants. We also make the observation that protocols may not be appropriate for public interest litigation where the aim of litigation is to obtain a legal ruling. The Federation therefore submits that there should be a provision to waive these requirements for matters involving unrepresented and impecunious litigants as well as in public interest cases.

Conclusion

We hope that these comments will assist the Commission. Please do not hesitate to contact me on 03 9652 1507 or michelle.mcdonnell@fclc.org.au if you wish to clarify any points in this letter.

Sincerely

Michelle McDonnell
Policy Officer
Direct line (03) 9652 1507
michelle.mcdonnell@fclc.org.au