

# Redfern Legal Centre

---



8 November 2010

Mr Laurie Glanfield  
Director General  
Attorney General's Department NSW

To: [lpd\\_enquiries@agd.nsw.gov.au](mailto:lpd_enquiries@agd.nsw.gov.au)

Dear Mr Glanfield

## **Draft Civil Procedure Amendment (Supreme Court Representative Proceedings) Bill**

We welcome this opportunity to comment on the draft Civil Procedure Amendment (Supreme Court Representative Proceedings) Bill ("the draft Bill").

### **About Redfern Legal Centre**

Redfern Legal Centre (RLC) is an independent non-profit community-based organisation with a prominent profile in the Redfern area of over 30 years' standing. We provide free legal advice and assistance, community education and advocacy on law and policy reform issues.

We are a generalist Community Legal Centre providing services to a population experiencing overlapping causes of social and economic disadvantage. Our clients generally have limited financial resources and often lack personal skills and strength to sustain extended litigation on their own behalf. The Centre itself is heavily reliant on volunteers to deliver its services and is not funded for disbursements.

We have a focus on human rights and social justice. We prioritise the needs of Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds and people with disabilities (especially mental health and drug and alcohol affected people).

Redfern Legal Centre has for many years identified economic rights as important in the attainment of a just society. We have had a particular interest in debt and credit matters and in this regard have been long aware of the important role for representative proceedings and the significant place of "cy pres" orders in achieving just outcomes.

---

73 Pitt Street Redfern NSW 2016 ACN: 31 001 442 039 ph: (02) 9698 7277 fax: (02) 9310 3586 web: [www.rlc.org.au](http://www.rlc.org.au)

*General enquiries:* Monday to Thursday 9am – 9pm, Friday 9am – 6pm

*Interviews by appointment:* Monday to Thursday 6.30pm – 8pm

## **Our view in summary**

The value of representative proceedings is in addressing problems that affect a number of persons in one proceeding, such that the matters may be dealt with effectively and expeditiously. Further, representative actions permit for matters to be properly presented which individually would not justify the cost of litigation but together can represent large amounts affecting many people. This provides a check and balance to those who would profit unlawfully at the expense of others with some level of impunity, where those persons will never be able to pursue an individual remedy.

We have read the comments on the draft Bill prepared by Ben Slade of Maurice Blackburn and largely support those submissions. We will not repeat them here but refer you to those comments.

However there are two aspects in which we would put alternate suggestions.

### **Section 158 (1) Standing**

We note the discussion as the effect of “standing” and “person with sufficient interest” as put forward by Maurice Blackburn.

The draft Bill is for the purpose of providing for “proceedings of a representative nature” but the provisions within it still require the person commencing proceedings has sufficient interest to commence proceedings on their own behalf.

It is consistent with our concern that disadvantaged persons have access to the justice that the definition of person of “sufficient interest” or “standing” include organisations who represent the interests of persons affected by the matters in dispute. We note in particular the challenges for people with disability in pursuing rights and the important role representative organisations play in pursuing systemic issues.

The case of *Access For All Alliance (Hervey Bay) Inc v Hervey Bay City Council* [2007] FCA 615 illustrates the concerns. In that case an organisation sought to represent the interests of persons with disability in relation to matters arising under the *Disability Standards for Access to Public Transport 2002* (“Disability Standards”). Collier, J found

.....

*Wide and liberal though the laws of standing should be, the courts of this country have drawn the line of demarcation between an open system and the requirement of some form of interest in the subject matter of the proceeding other than a mere emotional attachment or intellectual pursuit or satisfaction.*

*68 Although there may very well be a real question to be determined, whether of fact or law, it is not a question upon which the applicant has standing to prosecute as a person aggrieved.*

*69 This decision does not however prevent the members of the applicant who may be aggrieved by the conduct of the respondent from bringing their own proceedings, or alternatively combining to bring representative proceedings. Indeed as I have already noted representative proceedings are contemplated by s 46PB HREOC Act and Pt IVA [Federal Court of Australia Act 1976](#) (Cth).*

The body corporate was found not to be an aggrieved person itself and it was found inter alia that there was insufficient evidence as to how many of the members would be directly affected. This was despite the fact that it was an organisation with clear objectives of advocating for the rights of people with disability.

The point of having the organisation make the complaint is that it is in a better position to withstand the rigours of litigation than its individual members. In addition it is a group of people with disability who join to pursue common interests relating to disability but which may arise out of different factual situations. In this regard there is a common interest that the Disability Standards are applied but not all members will be using the same particular transport facility for instance.

For people with disability, there are many barriers to exercising and pursuing rights. The draft Bill does not appear to address the problem that arose in *Access For All Alliance (Hervey Bay) Inc*. While it will go some way to allow vulnerable individuals to have their interests put forward, it still leaves them facing considerable barriers to using the courts to address systemic issues.

Recommended:

That the opportunity is taken to address the issue of representation of the interests of disadvantaged persons by action taken on their behalf by a representative organisation.

Some criteria determining which organisations might be considered appropriate to have standing is necessary. It is submitted the current law as discussed in *Access For All Alliance (Hervey Bay) Inc* is too narrow.

It should be enough that the organisation has the objective of representing the interests of its members, be a not for profit organisation and its membership includes a person or persons with "sufficient interest" or "standing" to commence proceedings on the person's own behalf against the defendant or defendants.

**Section 165: Distribution where costs are excessive**

We also consider that proposed section 165 is inconsistent with the provisions of section 178.

Recommendation:

Proposed section 165 be amended by inserting the words "Subject to section 178" before the word "If" at the start of the section

Or

by inserting the words "the Court concludes that it an order under section 178(5) could not reasonably be made" at the end of subsection 165 (b).

Please call Elizabeth Morley at this Centre on 9698 7277 if you wish to discuss this submission further.

Yours sincerely

**REDFERN LEGAL CENTRE**

Elizabeth Morley  
Principal Solicitor

Joanna Shulman  
CEO