

TRADE PRACTICES ACT REVIEW

Submission by the

CONSUMER LAW CENTRE VICTORIA

21 JUNE 2002

Submission to the Trade Practices Act Review Committee

The Consumer Law Centre Victoria (CLCV) welcomes the opportunity to make this submission to the Review Committee. Given time and resource constraints, it is the intention of the CLCV to raise briefly in this paper a number of matters of concern and expand upon these matters by way of oral submission before the Review Committee.

1. Public profile of the ACCC

- In relation to clause 1(d) of the Terms of Reference, the CLCV strongly supports the current public presence of the Australian Competition and Consumer Commission (ACCC).
- In our view a public presence is critical to the role of an effective competition and consumer regulator. It assists in meeting many of the statutory objectives of the ACCC.
- In our submission, as a result of its public profile, the ACCC creates consumer confidence in its regulatory processes and activities, and indeed, consumer confidence in a fair and balanced marketplace. Public confidence in the effective, independent regulation of Australian businesses has suffered considerably in the past few years, with a range of high-profile corporate collapses and similar problems. The transparency and presence of the ACCC is a welcome reminder to business and consumers of the appropriate vigilance of a regulator. Of course, as much of the ACCC's legislative mandate deals with high-profile issues of wide public interest, it is unsurprising that it will generally have a greater public presence than other independent authorities.
- Further, the public presence of the ACCC results in both cost-effective and time-effective regulatory outcomes for business and consumers. Public presence provides a highly cost-effective means of educating the public and business about their rights and obligations.
- The CLCV believes that public scrutiny of industry results in benefits to consumers and businesses at all levels.

2. Cy pres settlements

- 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. 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 CLCV was established in 1992 with a core-funding base independent of government.
- The CLCV submits that the TPA should be amended to allow for the ACCC to seek compensation for consumers by way of cy pres settlements. Through the resourcing of consumer advocacy and public interest organisations, greater protection of the consumer interest is able to be advocated. Importantly, greater presence in regulatory and government reviews is able to be achieved. Those reviews are far too often dominated by

the supply-side of the market, making the role of the regulator as an independent arbiter, weighing balanced arguments, much more difficult.

- When consumers have suffered loss as a result of market failure, and that loss cannot be apportioned back to those consumers, it is appropriate that the money is given to those that aggregate and represent the interests of consumers. This resourced representation and advocacy ought to lead to fairer market places which ultimately should lead to less consumers suffering loss in the first place.

3. Cease and desist powers and criminal sanctions

- The Centre supports the introduction of criminal sanctions under the TPA, such that there are sufficient penalties to deter inappropriate behaviour of directors.
- In our view, the power to make cease and desist orders is a sensible addition to the suite of options available to a competition and consumer protection regulator.
- The CLCV also supports the comments made by the ACCC Chairman, Professor Allan Fels in the ACCC's Press Release dated 9 May 2002. In particular, we support the statement by Professor Fels that an 'effect' test should be introduced to the TPA.

4. The Consumer Law Centre Victoria

The CLCV is one of Australia's leading consumer advocacy and public interest organisations. The CLCV seeks to advance the interests of low-income and vulnerable consumers. The CLCV undertakes research, policy development, lobbying, law reform activities, education, public interest test case litigation and conducts a large consumer casework legal practice. The Centre is currently working on a range of consumer issues, including banking, telecommunications, utilities, pay day lending and fringe credit, regulation of lawyers, public transport, fair trading and access to justice issues. Chris Field and Anna Stewart of the CLCV have prepared this submission.

Chris is the Executive Director of the Consumer Law Centre Victoria, a position he has held since June 1998. Chris is the Chair of the Australian Consumers' Association, Australia's largest and leading consumer organisation. Additionally, he is a director of the Energy and Water Ombudsman Victoria and the Consumer Utilities Advocacy Centre Victoria. Chris sits on the consumer consultative committees of the Australian Competition and Consumer Commission and the Essential Services Commission.

Anna Stewart is the Public Interest Lawyer at the CLCV. Before joining the CLCV, Anna spent four years at a large Australian commercial law firm practising in the area of construction and engineering law (both litigious and non-litigious). During that time, Anna was seconded to the Public Interest Law Clearing House, and was also the pro bono co-ordinator for the firm's Melbourne office. Currently undertaking a Master of Laws, specialising in energy and resources law, Anna holds Arts and Law Honours degrees.

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