



10 November 2010

Mr Laurie Glanfield
Director General
Attorney General's Department

By email: lpd_enquiries@nsw.agd.gov.au

Dear Mr Glanfield,

Draft Civil Procedure Amendment (Supreme Court Representative Proceedings) Bill 2010

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to comment on the draft Civil Procedure Amendment (Supreme Court Representative Proceedings) Bill 2010 (draft Bill).

As you are aware, PIAC is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC conducts litigation on a broad range of public interest issues, particularly where a decision or practice affects a significant number of people who suffer some economic or other disadvantage as a result. PIAC has also involved in a number of class actions, most notably the class action commenced in 1994 on behalf of victims of HomeFund, the ill-fated NSW Government-sponsored home loans scheme.

PIAC supports the proposal for a representative proceedings regime modelled on Part IVA of the *Federal Court of Australia Act 1976* (Cth) (*Federal Court Act*) and welcomes the additional amendments proposed.

PIAC submits that Part IVA of the *Federal Court Act* has been a valuable mechanism to promote access to justice for a significant number of people who would otherwise have been severely hampered from making individual claims for compensation against powerful wrongdoers.

Further, the proposed amendments in the draft Bill will bring clarity to the law in relation to the appropriateness of bringing representative proceedings on behalf of a limited class of persons, and it will enable class actions to be brought where not all group members have claims against all of the respondents. Further, the introduction of a cy-pres remedy marks a significant improvement in the range of remedies available to plaintiffs.

A further benefit of having a comprehensive and effective representative proceedings regime in NSW is that statutory protection against adverse costs orders is available under section 47 of the *Legal Aid Commission Act 1979* (NSW) in state matters whereas such protection is not available in Federal Court matters. In matters where a case can be heard in either the state or

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federal jurisdiction, the fact that statutory protection against costs is available in state matters may be a significant factor for a litigant in determining in which jurisdiction to bring an action. This protection enhances access to justice for those who would not otherwise be able to bring an action because of the prohibitive costs of litigation and the risks of an adverse costs order.

PIAC has had an opportunity to read the submission by Mr Ben Slade of Maurice Blackburn on the draft Bill and we endorse his position and the recommendations he has made.

Please do not hesitate to contact me on the number or e-mail address below if you have any questions or require any further information in relation to the above.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Vavaa Mawuli'. The signature is fluid and cursive, with a distinct 'V' at the start and a 'M' in the middle.

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