

DISPUTE RESOLUTION AT CONSUMER AFFAIRS VICTORIA (CAV) AND THE VICTORIA
CIVIL AND ADMINISTRATIVE TRIBUNAL (VCAT) – ACCESSIBILITY AND OUTCOMES
FOR CREDIT CONSUMERS

Background Paper – Dispute Resolution Processes for Credit Consumers

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Background

Introduction

This background paper sets out basic background information about the consumer credit research project. The background paper will be used to inform the project and key stakeholders about the project and timelines.

The project is designed to explore dispute resolution processes and to determine the accessibility and outcomes for credit consumers at Consumer Affairs Victoria (CAV) and Victorian Civil and Administrative Tribunal (VCAT). The project is being undertaken by the Conflict Resolution Research Centre, La Trobe University (CRRC) in conjunction with the Consumer Law Centre Victoria Ltd (CLCV), following a grant from the Consumer Credit Fund.

The project arises because each of these groups is interested to determine levels of user satisfaction, whether dispute resolution processes used are just and equitable and whether changes can be made to enhance the operations of CAV and VCAT.

Project Aims

The objectives of the project are to assess the effectiveness, accessibility and fairness of dispute resolution processes that address the needs of credit consumers in order to assist policy makers, CAV, VCAT and consumers to ensure that processes are function as effectively as possible.

Expected outputs include increased information and knowledge about the operation of dispute resolution processes for stakeholders and credit consumers and information about potential improvements to these processes. The outputs are specifically linked to the following sub-objectives:

- To research processes and consider access arrangements to CAV's dispute resolution services and VCAT's Credit List, with a particular focus on the needs of low-income and vulnerable and rural and regional credit consumers;
- To explore and comment upon the current scope of CAV's dispute resolution services and VCAT's Credit and Civil Claims Lists;
- To consider levels of satisfaction with CAV dispute resolution services and VCAT's Credit and Civil Claims Lists (business and consumer);
- To assess whether the dispute resolution processes used by CAV and VCAT's Credit and Civil Claims Lists are fair, timely and effective.

Who Will Benefit from the Project?

It is anticipated that groups benefiting from the project will include consumers, CAV, VCAT, policy makers, government, credit providers and other stakeholders, such as financial counsellors and community workers. In summary, the principal benefits are to ensure that relevant information is available to support effective complaints handling by CAV and VCAT with respect to credit issues, which will in turn benefit consumers, particularly low-income and vulnerable consumers.

Representatives of stakeholders have been included in an advisory steering group, which continues to assist CRRC and CLCV to determine project approaches, options and other parameters. See Appendix B for details of the project group and advisory steering group members.

Consumer Credit Issues

When consumers are provided with money to purchase goods, services or land, or to lease goods, they are seen to have been provided with credit. Consumers are constantly being invited to buy today and pay later. Credit can pose a risk to some consumers who will find that they fall into uncontrolled debt and experience problems of over-commitment.

The growth in the number of credit providers and the range of products available to consumers has contributed to a sharp increase in the level of indebtedness of Australian households. As such, it is not surprising that an accompanying increase in the number of disputes has also been observed.

Not all credit disputes end up in litigation or an alternative dispute resolution process as often disputes are settled by negotiation by financial counsellors and CAV, as well as by solicitors at the Consumer Credit Legal Service. Disputants may also give up or accede to demands. If a matter is litigated, then within Victoria, the relevant determinative forum will usually be the Credit List of VCAT. Other forums include the Courts (particularly where legal action has been issued by the credit provider) and industry external dispute resolution (EDR) schemes (usually where the credit provider is a bank or credit union).

Credit transactions which occurred after 1 November 1996 are covered by the Consumer Credit (Victoria) Code (the Code) and transactions occurring before this are covered by the *Credit Act 1984* (Vic). VCAT has been given exclusive jurisdiction in relation to the key consumer protection provisions of the Code. If a consumer is facing debt recovery proceedings in a Court, he or she must seek and obtain a stay of those proceedings in order for any Code issues, for example, a claim that the transaction was unjust within the meaning of section 70 of the Code, to be considered by VCAT.

Some credit providers who are also FSR Licence holders are members of industry EDR schemes, but credit providers in general are not required to become members of such schemes. If a consumer has a dispute with a credit provider that is not a member of an industry EDR scheme, he or she generally has is likely to go to VCAT to have the dispute dealt with.

Consumer Rights

Consumers are often credited with having ‘rights’, which require protection. The basic rights of consumers, as set forth by U.S. President John F. Kennedy in his 1962 message to Congress on consumerism, were described as: (1) the right to safety; (2) the right to be informed; (3) the right to choose; and, (4) the right to be heard. Each of these rights is seen to have major importance in the objectives of the consumer-protection movement. Other rights since enumerated include the right to redress, the right to consumer education, the right to participate in marketplace decision-making and the right to have access to basic services.

Consumers who do not consider that their rights have been respected may or may not take action, and action itself can take many forms. There is a great deal of literature, which refers to consumer behaviour in this regard. For the purposes of this report, the notion of what might constitute a ‘complaint’, why it might be useful for a complaint to be made and followed through, and the attributes of a good complaints system, will be briefly explored.

Consumers frequently feel disgruntled or disadvantaged, but it is not until they express their dissatisfaction about ‘...goods, services, action or inaction...’¹ that they are seen to be making a complaint.

A complaint will most often arise when a consumer has not had their needs met regarding the goods or services themselves, such that the item or service does not do what it should do, breaks down, the problem was not fixed or the content was of a low standard; the consumer does not feel respected, valued or that they are important; and/or the process took an inappropriate amount of time, insufficient information was provided, or the process was not ‘fair’.²

A complaints system is usually an internal rather than an external system. If a complaint becomes a dispute, it is referred out to an external dispute system.³ Examples of external schemes that are independent of governments include the Financial Industry Complaints Service. Both CAV and VCAT are external government based dispute systems, and matters may or may not have progressed through an internal complaints system prior to entry into these schemes.

Standards

Factors impacting on the design and operation of external dispute systems such as those in place at CAV and VCAT include ‘...the influence of tradition, the political context, the role of institutions, power and ideology’.⁴ Other issues include uncertainty about definitions of dispute resolution processes, and the standards that might apply to regulate an organisation and practitioners.

¹ T Sourdin, *Alternative Dispute Resolution* (2nd Ed, Lawbook Co 2005) p. 216.

² T Sourdin, *Alternative Dispute Resolution* (2nd Ed, Lawbook Co 2005), p. 216.

³ T Sourdin, *Alternative Dispute Resolution* (2nd Ed, Lawbook Co 2005), p. 218.

⁴ T Sourdin, *Alternative Dispute Resolution* (2nd Ed, Lawbook Co 2005), p. 176.

There are a number of Australian Standards and reports that are relevant to complaints handling.⁵ The Australian Standard suggested that effective complaints systems will have certain characteristics and more recent work in the area of complaints standards has focused on using complaints to enhance quality and to identify and manage risk. This additional focus can mean that there is a concentration on more advisory and investigatory processes. The *Benchmarks for Industry – Based Customer Dispute Resolution in 1997* also articulate standards in this area.⁶

There are six benchmark areas:

“Accessibility – The scheme makes itself readily available to customers by promoting knowledge of its existence, being easy to use and having no cost barriers.

Independence – The decision- making process and administration of the scheme are independent from scheme members

Fairness – The scheme produces decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which decisions are based.

Accountability – The scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic industry problems.

Efficiency – The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.

Effectiveness – The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.”

In 2004, a new International Standard on complaints management was produced.⁷ The International Standard sets out guiding principles such as visibility, accessibility, responsiveness, objectivity, charges, confidentiality, customer-focused approaches, accountability and continual improvement.⁸ The complaints handling framework (as with many existing models and those that operate in the dispute resolution sphere) refers to commitment, policy, responsibility and authority, planning and design, communication (including responsiveness, tracking and investigation), maintenance, improvement and auditing.⁹ The International Standard – ISO 10002: 2004, *Quality Management – Customer Satisfaction – Guidelines for Complaint Handling in Organizations* – does not, however, suggest

⁵ These include: Consumer Affairs Division, Department of Treasury, *Industry Self Regulation in Consumer Markets* (2000); Consumer Affairs Division, Department of Industry, Science and Tourism, *Benchmarks for Industry Based Customer Dispute Resolution Schemes* (1997); National Alternative Dispute Resolution Advisory Council (NADRAC), *Alternative Dispute Resolution Definitions* (AGPS, Canberra, 1997); Australian Standard 4608 – 1999, *Australian Standard – Guide to the Prevention, Handling and Resolution of Disputes* (1999); Australian Standard AS4269 – 1995, *Australian Standard – Complaints Handling* (1995). Note ASIC has indicated that it is reviewing this Standard: see also ASIC, *Licensing: External and Internal Dispute Resolution Procedures* (FSRB Policy Proposal Paper No. 7, 2001).

⁶ See Consumer Affairs Division, Department of Industry, Science and Tourism, *Benchmarks for Industry-based Customer Dispute Resolution Schemes*, August 1997, Canberra also at <http://www.selfregulation.gov.au/publications>. <10 June 2002>. These benchmarks were developed prior to the Standard on Dispute Resolution and draw upon the earlier standard on complaints handling.

⁷ ISO 10002: 2004, *Quality Management – Customer Satisfaction – Guidelines for Complaint Handling in Organizations*.

⁸ ISO 10002: 2004, *Quality Management – Customer Satisfaction – Guidelines for Complaint Handling in Organizations*, pp. 3,4.

⁹ ISO 10002: 2004, *Quality Management – Customer Satisfaction – Guidelines for Complaint Handling in Organizations*, pp. 5–10.

what types of dispute resolution processes may be used for handling complaints and this approach is in line with international variations in complaint handling (in some cultures investigation and ‘determination’ rather than more facilitative dispute resolution may be the norm).

To be effective, a complaints management system should:

- promote policies and processes to deal with complaints as part of a continuous quality improvement program;
- be accessible, easy to use and encourage feedback;
- respond promptly and sensitively to complaints;
- assess all complaints to determine appropriate responses;
- resolve complaints and investigate in a complete and fair manner;
- manage information so that relevant facts and decisions are communicated while confidentiality and personal privacy is protected;
- record all complaints to review cases, identify trends and risks, and report on improvements; and
- use complaints to improve services and regularly evaluate the performance of the complaints system.¹⁰

Processes used to handle complaints can include:

- communication and negotiation;
- investigation and advice; and
- referral and decision making.

¹⁰ T Sourdin, *Alternative Dispute Resolution* (2nd Ed, Lawbook Co 2005)

Credit Dispute Conciliation at Consumer Affairs Victoria

CAV offers specialised conciliation services for disputes involving estate agents or building contracts, but credit disputes are conciliated within CAV's general conciliation service.

CAV's power to conciliate disputes is found in s. 104 of the *Fair Trading Act 1999* (Vic). This power is subject to certain provisos, including a requirement that the dispute is 'reasonably likely to be settled': s. 104(1). CAV's *Conciliation Policy* outlines matters taken into account in deciding whether a dispute is reasonably likely to be settled, including:

- whether the consumer has already made reasonable attempts to solve the matter;
- whether the consumer has contributed to the dispute through 'inappropriate behaviour';
- whether the dispute is overly subjective;
- whether the trader has previously refused to participate in CAV conciliation or is 'not amendable' to the conciliation process;
- whether there has been unreasonable delay; and
- whether the consumer has already rejected a reasonable offer of redress by the trader.

Consumers can initiate the conciliation process by making a complaint to CAV. However, consumers are invited to make a complaint only where certain criteria are fulfilled. These include, among other things, a requirement that the complaint does not involve any breach of contract by the consumer. Conceivably, some consumers who experience difficulty in negotiating alternative payment arrangements with their credit provider and who require conciliation may have already breached their credit agreement when they make a complaint to CAV. Additionally, CAV will not conciliate disputes of a 'trivial' nature, and this includes consideration of whether the level of financial detriment makes conciliation cost effective.

The CAV *Conciliation Policy* states that the purpose of the process is to 'resolve complaints efficiently and constructively and to ensure systemic issues are identified, the conduct is stopped and redress obtained.' The key principles by which conciliation is conducted are *accessibility, independence* (of CAV as conciliator), *fairness* (procedural and substantive, having regard to consumer protection legislation, good industry practice and codes of practice), *accountability* (of CAV to the Minister and Parliament) and *efficiency and effectiveness*.

CAV can attempt to conciliate a dispute but cannot compel a trader to resolve an issue. Where no voluntary, agreed resolution between the two parties can be achieved, CAV cannot make any binding determination. In these circumstances, CAV will advise consumers of other possible options such as going to the VCAT or seeking civil remedies in the Courts.

Statistics

According to its 2003-04 Annual Report, CAV received 16,000 written complaints, with 1.3 percent of matters conciliated involving 'credit, finance and investment' disputes. The most common types of disputes conciliated involved residential tenancies (46.5 percent) and household goods (23.3 percent). Sixty per cent of all complaints were 'successfully resolved', but there is no information available on the success of conciliation of credit disputes specifically.

Despite this, the 2003-04 Annual Report states that in that year CAV focussed on credit and credit-related issues in its functions generally (such as reviewing legislation and regulation and providing public information) because of its concerns about over-indebtedness among low-income consumers and emerging problems with debt collectors and fringe credit providers. This included the establishment of a dedicated project team to oversee its credit function.

The 2002-03 Annual Report states that 'insurance, finance and investment' disputes (with no specific mention of 'credit') accounted for 1.55 percent of matters conciliated, and CAV received over 150 complaints involving credit and finance brokers.

About the Victorian Civil and Administrative Tribunal

VCAT was created on 1 July 1998 and replaced 15 boards and tribunals. It aims to provide access to 'modern, accessible, efficient and cost effective' civil justice.¹¹ It covers a range of disputes including those relating to the purchase and supply of goods; discrimination; domestic building works; residential and retail tenancies and credit.

These and the other areas falling within VCAT's jurisdiction are dealt with through 'lists', or sections which specialise in certain types of cases. Processes attached to each list can vary according to cases with which each deals.

However, the process typically commences with the filing of an application with the relevant list. This will generally be followed by a mediation, directions hearing or compulsory conference. Should the matter proceed to a hearing, parties may call or give evidence, ask questions of witnesses or make submissions. A member of VCAT will then give a decision at the conclusion of the hearing, or shortly thereafter.

Decisions may be appealed to the Supreme Court of Victoria, but only on questions of law.

The Credit List at VCAT

The Credit List at VCAT hears a wide range of disputes in relation to credit contracts between borrowers and banks, building societies and other finance providers. Credit contracts include mortgages over homes or goods such as boats, cars, caravans, personal loans, or continuing credit contracts such as credit cards.¹² Examples include:

- Claims for repossession of goods where the credit provider has taken a mortgage over the goods and the debtor has not met the loan repayments;
- Applications to postpone enforcement proceedings;
- Applications to review unconscionable interest and charges;
- Applications to award damages to a debtor against both supplier and linked credit provider; and
- Claims by a debtor who is unable, because of hardship, to repay a loan from a credit provider but who would be able to repay it if the loan period were extended or the loan repayments were less;¹³

The Credit List also hears and determines applications for compensation in relation to fees charged by finance brokers, as well as applications for compensation for extinguishment of security interests over goods, including cars.¹⁴

The VCAT Credit List is designed to be a less formal venue than a Court. However, it is still relatively legalistic in its approach and consumers appearing before the Credit List will usually require legal representation at the hearing and will also require legal assistance to

¹¹ See VCAT web site, www.vcat.vic.gov.au <8 November 2005>

¹² See VCAT web site – www.vcat.vic.gov.au <8 November 2005>

¹³ See VCAT Credit List Users Guide and www.vcat.vic.gov.au <8 November 2005>

¹⁴ See www.vcat.vic.gov.au <8 November 2005>

prepare their case. Legal assistance and representation is also often required at the mediation stage.

The Credit List aims to resolve applications as quickly as possible, primarily because many people applying to the Credit List are experiencing financial hardship. According to the 2003-04 Annual Report the Credit List endeavours to resolve 60 percent of cases within six weeks of the application, maintaining a settlement rate at 70% of all cases.¹⁵

Statistics

The VCAT 2003-04 Annual Report notes that VCAT received 86,355 applications and of these only 182 were received by the Credit List, with the vast majority of matters being heard in the Residential Tenancies List.¹⁶ This was a 77 % increase on matters received by the Credit List in 2002-03.¹⁷ The Credit List finalised 166 cases and on 30 June 2004 29 cases were pending.¹⁸ According to the 2003-04 Annual Report the majority of cases before the Credit List involved requests for repossession orders, with a total of 116 (64 percent) such requests in that year.¹⁹ The reason for such a large number of this type of transaction is the fact that credit providers must not enter residential premises to recover mortgaged goods without an order from VCAT or a Court.

More complex matters involved applications made by credit providers with respect to breaches of key requirements of the Code, seeking determinations from VCAT as to whether or not civil penalties should be imposed on the credit providers.²⁰ Other matters were applications made by debtors in financial hardship seeking to alter their obligations under a credit contract (usually referred to as a hardship application) or to have enforcement proceedings against them postponed.

¹⁵ VCAT 2003-04 Annual Report at 20.

¹⁶ See www.vcat.vic.gov.au <8 November 2005>

¹⁶ VCAT 2003-04 Annual Report at 20.

¹⁷ See www.vcat.vic.gov.au <8 November 2005>

¹⁷ VCAT 2003-04 Annual Report at 20.

¹⁸ See www.vcat.vic.gov.au <8 November 2005>

¹⁸ VCAT 2003-04 Annual Report at 20.

¹⁹ See www.vcat.vic.gov.au <8 November 2005>

¹⁹ VCAT 2003-04 Annual Report at 20.

²⁰ See www.vcat.vic.gov.au <8 November 2005>

²⁰ VCAT 2003-04 Annual Report at 20.

Methodology

This research project involves a review of relevant literature in this area. Of particular importance are reviews of EDR schemes that have been conducted in recent years. Such information assists in the design of the research work. In addition, reforms in the civil justice area and issues relating to case management and administration may be relevant. For example, the Australian Institute of Judicial Administration (AIJA) conducts research into various aspects of judicial administration and many of its reports²¹ are relevant to this research. AIJA monitors the development of case management systems in Australia and holds an annual conference on case management and delay reduction.²² Material prepared by the Justice Research Centre, a project of the Law and Justice Foundation of New South Wales, is another source of research relevant to this inquiry.²³ The Productivity Commission also provides information used for benchmarking government services such as courts and tribunals.

The researchers have also considered a number of ASIC publications, as well as publications by government and private bodies.²⁴ These include the *Consumer Redress Study*²⁵ that reported that there were particular problems with schemes that promoted advisory and determinative processes. In particular it reported there was:

*'...high consumer satisfaction with the accessibility of the schemes, wide variation in satisfaction with scheme independence and general dissatisfaction with the outcome of the disputes.'*²⁶

²¹For example, R Cranston et al, *Delays and Efficiency in Civil Litigation*, Australian Institute of Judicial Administration Melbourne 1985; H Powles et al, *The Litigant in Person – A Discussion Paper*, Australian Institute of Judicial Administration, Melbourne 1993; P Williams et al, *The Cost of Civil Litigation Before the Intermediate Courts of Australia*, Australian Institute of Judicial Administration, Melbourne 1992; T Church and P Sallman, *Governing Australia's Courts*, Australian Institute of Judicial Administration, Melbourne 1991.

²²Australian Institute of Judicial Administration, 'Case Management and Delay Reduction in the Higher Courts' *Papers* Second Annual AIJA Meeting of Australian Higher Courts on Case Management and Delay Reduction Melbourne 29–30 November 1992; Australian Institute of Judicial Administration 'Case Management in the Higher Courts', *Papers* Fourth Annual AIJA Conference of Australian Higher Courts on Case Management in the Higher Courts, Melbourne, 2–3 December 1994.

²³For example, T Matruglio and J Baker, *An Implementation Evaluation of Differential Case Management: A Report on the DCM Program in the Common Law Division of the Supreme Court of New South Wales*, Civil Justice Research Centre Sydney 1995; T Matruglio, *Plaintiffs and the Process of Litigation: An Analysis of the Perceptions of Plaintiffs Following their Experience of Litigation*, Civil Justice Research Centre, Sydney 1994; J Baker, *Who Settles and Why? A Study of the Factors Associated with the Stage of Case Disposition*, Civil Justice Research Centre, Sydney 1994; T Matruglio, *So Who Does Use the Courts? Civil Justice Research Centre, Sydney 1993*; D Worthington and J Baker, *The Cost of Civil Litigation: Current Charging Practices in New South Wales and Victoria*, Civil Justice Research Centre, Sydney 1993.

²⁴These include, Consumer Affairs Division, Department of Treasury, *Industry Self Regulation in Consumer Markets*, August 2000; Consumer Affairs Division, Department of Industry, Science and Tourism, *Benchmarks for Industry Based Customer Dispute Resolution Schemes*, 1997; National Alternative Dispute Resolution Advisory Council (NADRAC) *Alternative dispute resolution definitions* (AGPS Canberra March 1997), Australian Standard 4608 – 1999 *Australian Standard – Guide to the prevention, handling and resolution of disputes*, 1999, Australian Standard AS4269 – 1995, *Australian Standard – Complaints Handling*, 1995 Note ASIC has indicated that it is reviewing this Standard – see also ASIC, *Licensing: External and internal dispute resolution procedures*, FSRB Policy Proposal Paper No 7, June 2001).

²⁵Commonwealth Department of the Treasury, *Consumer Redress Study* (Canberra, 1999).

²⁶Referred to in NADRAC, *A Framework for ADR Standards*, (Canberra, Attorney-General's Department, 2001) 28.

Overview of Empirical Research

Research sample

The information for the empirical research conducted as part of the ‘first’ stage in the research, will be collected from three sources: finalised CAV case files; finalised VCAT files and focussed interviews of CAV telephone staff, The ‘second stage’ of the research will involve a telephone survey directed at CAV complainants; a self-administered questionnaire mailed to applicants and respondents involved in VCAT finalised credit cases; and a self-administered questionnaire mailed to those involved in finalised VCAT cases involving debt recovery.

The information obtained in these stages will be supplemented by information obtained from interviews and focus groups.

The project uses a range of methodologies. Firstly, information will be collected from files held at CAV and VCAT using file data. To extract data from files a research coding sheet has been created and data will be manually extracted from each file.

The project has been designed to incorporate the following methodological elements that are directed at specified criteria:

1. Accessibility

The research team will consider issues relating to accessibility from two primary perspectives:

- a) Existing complainants – A file review as well as qualitative and quantitative data collection process will provide demographic and other information about the current users of CAV’s dispute resolution services and VCAT’s Credit and Civil Claims Lists, as well as information about how the CAV and VCAT are accessed by consumers. Reports relating to this data will also link demographic data to levels of satisfaction and data relating to access and perceptions regarding the levels of assistance. In addition, potential barriers to access, such as language, ethnicity and literacy will be explored.
- b) Stakeholder groups – Stakeholder groups and interested parties include consumer and public interest organisations, financial counsellors and lawyers, as well as credit provider companies will provide input through focus groups and interviews. The survey design will allow some views to be captured via a direct mail out questionnaire.

2. Independence and impartiality

The file based survey, questionnaire and focus group data will be used to explore and report on independence and impartiality. This data will be cross-linked to data relating to outcomes, demographic indicators, satisfaction and other data.

3. Efficiency

The research team will undertake a benefit analysis that draws upon data provided in the mail out questionnaire and the focus groups. The file survey data will explore issues relating to speed and cost.

4. Fairness

Issues relating to fairness will be closely explored in the questionnaire process. Key issues about perceptions in respect of procedural fairness, outcomes, length of process, degree of formality and other indicators will be cross linked to demographic and outcome data.

Overall outcome data will also be explored in focus groups with stakeholders.

5. Quality of advice

These issues will be explored from two perspectives – in respect of key stakeholders (through the questionnaire and focus group approach) and from the consumer's perspective (through the use of a questionnaire). To this end, the questionnaire design will also incorporate features designed to explore whether dispute resolution services delivered by CAV and VCAT's Credit List are effective, neutral, informal and appropriate.

Expected Outcomes

It is anticipated that the project will have the following outcomes:

- The project will provide an independent evaluation of the accessibility and outcomes of the dispute resolution services offered by CAV and VCAT in relation to consumer credit disputes, particularly with respect to low-income and vulnerable consumers and rural and regional consumers.
- The project will provide a rigorous and timely analysis of the processes used by CAV and VCAT in resolving disputes, and will incorporate a comparison of other schemes, such as the Financial Industry Complaints Service (FICS), to evaluate consumer outcomes.

A project report will be generated which will make recommendations to assist CAV and VCAT (focusing on the Credit List) to develop a best practice approach to their dispute resolution services, particularly in relation to low-income and vulnerable consumers and rural and regional consumers.

Timelines

The key timelines for the project are as follows:

- November 2005 – Apply for Ethics Approval (La Trobe University)
- December/January 2006 – Refine Research instruments
- February 2006 – Extract data VCAT files
- March 2006 – Mail out questionnaires, VCAT matters
- April 2006 – Extract data CAV files
- April 2006 – Telephone survey, CAV files. Follow-up letters, mail-out surveys.
- May 2006 – Analysis of data. Follow up interviews.

In December 2006 it is proposed to establish a web site presence and to seek comment from interested parties.

Project Plan

Ethics Approval

Data Collection

CAV

An initial survey of queries will be conducted either by screen dump or by observation in the CAV call centre. It is expected that this will be undertaken in December 2005.

Following from this, a telephone survey of files opened as complaints will be conducted in April/May 2006. This survey will encompass files opened in the preceding 6-month period. It is intended that approximately 200 matters will be surveyed.

VCAT

A mail-out survey will be used to survey the VCAT files. The survey will encompass approximately 200 Credit List files (representing a 12-month period) and approximately 200 files from the Debt Recovery List (representing a 3-month period). It is anticipated that the survey will be mailed out in February 2006. If there has been a poor response, follow up letters will be sent in March 2006 and the survey will be re-sent in April 2006.

Focus groups and/or face-to-face interviews will be conducted with respondents to matters in the Debt Recovery List in May 2006.

Appendix A: The Organisations

Conflict Resolution Research Centre

The CRRC was established in late 2002 at the La Trobe University City campus, Melbourne, and aims to:

- promote research into conflict resolution, mediation, negotiation, decision making and communication skills
- expand linkages between micro skills development in conflict resolution and research
- establish links with practitioners, scholars and stakeholders (such as government, the courts, industry and consumers) in relevant fields
- provide leadership in the area of conflict resolution research and policy development
- evaluate and assess programs and processes in the dispute resolution area by reference to comparable indicators.

The Director of the CRRC is Professor Tania Sourdin (Professor of Law and Dispute Resolution, La Trobe University). Professor Tania Sourdin has previously undertaken qualitative and quantitative empirical work in seven Australian Courts and Tribunals and has expertise and has published article, books and reports in respect of ADR, dispute resolution processes, consumer and commercial law. A team of highly regarded and well-known researchers supports the CRRC's work. In respect of each project undertaken by the CRRC, a specialist team is assembled with experienced expert researchers and support staff.

The CRRC provides a range of consultancy services to a variety of bodies and its Director is a member of the National Alternative Dispute Resolution Advisory Council (NADRAC) and chairs the NADRAC Research Committee.

The CRRC is involved in and coordinates a number of research projects. Recent projects include:

- In 2003, in association with Australian Expert Group in Industry Studies (AEGIS), University of Western Sydney, the CRRC explored case management processes in relation to insurance for Allianz Insurance and facilitated case management planning flowing from empirical studies conducted by AEGIS.
- In late 2003, the CRRC finalised a New South Wales research report, *Evaluating Mediation - NSW Settlement Scheme 2002*. This report empirically evaluates mediation, arbitration, 'between parties' agreement and trial processes. The research involved extracting court data, surveying parties involved in different processes and surveying mediators.
- *Artificial intelligence in the legal domain* is a project that is computer-modelling decision-making in local courts. The project report was made available in mid-2004. This work is expected to impact upon advisory processes and has the potential to impact upon supported negotiation aids.
- *Knowledge Discovery in Discretionary Legal Domains* is an Australian Research Council funded project, developing legal decision support systems in discretionary domains and commencing in 2004. This research is being undertaken in collaboration with Professor John Zeleznikow from Victoria University, Victoria Legal Aid and JUSTSYS.

- The *Quality Framework for Dispute Resolution* project has resulted in the completion of a research report directed at creating a quality system for ADR practitioners. In 2004, the project developed guidelines for practitioners working under the *Family Law Act 1975* and was funded by the Commonwealth Attorney-General's Department.
- The development of a *National Health Care Complaints Handbook* directed at all health care providers in Australia was undertaken in 2004 and funded by the Commonwealth Government and HCCC in NSW. It was directed at setting up practical and workable methods to resolve health care disputes and complaints.
- In 2002 and 2003 the CRRC, in collaboration with Community Consultations, independently reviewed the Financial Industry Complaints Service (FICS). The Review involved a qualitative and quantitative review of matters finalised by FICS and resulted in the publication of an Issues Paper available at <http://www.fics.asn.au/docs/ficsreview.pdf>. A final Review Report was published in 2003 following an extensive consultation process and is available at <http://www.fics.asn.au/docs/finalficsreview.pdf>.

Consumer Law Centre Victoria

The CLCV is Australia's second largest and fastest growing consumer organisation. The CLCV undertakes research, policy development, advocacy and education. The CLCV also operates a large consumer legal practice assisting over thousand low-income consumers each year with free legal advice and representation. The CLCV's work is focussed on advancing the interests of low-income and vulnerable consumers. The CLCV is currently working on a range of issues that affect the consumer interest, including utilities, competition and consumer protection policies, financial services, telecommunications, exploitative credit and access to justice.

Catherine Wolthuizen is the Executive Director of CLCV. Catherine has extensive experience in consumer policy and advocacy, having previously worked as Senior Policy Officer, Financial Services at the Australian Consumers' Association and as Senior Policy Officer, Public Services at the UK National Consumer Council. She is current Chair of the Consumers' Federation of Australia and a member of a range of consultative and advisory committees to government and industry.

Recent competitive funding grants for the delivery of CLCV programs similar to that proposed include the following:

- The CLCV and the Financial Services Consumer Policy Centre received funding through a competitive tender to assist the Australian consumer movement to prepare a combined consumer submission in October 2002 in response to the independent review of FICS. The Project was an important contribution to FICS's ability to respond to consumer concerns regarding their processes and ways in which they could be improved. Many of the recommendations made in the project have been incorporated into FICS' revised rules. Project value: \$15,000.

The CLCV completed a research project, in conjunction with the Consumer Utilities Advocacy Centre (CUAC), entitled *Poverty and Access to Essential Services*. The project,

funded by CUAC, examined the reality of disconnection or restriction from electricity, gas and water for Victorian households unable to pay their utility bills. The project included a review of the literature on disconnection and restriction, an examination of current legal, regulatory and policy responses to disconnection and restriction and surveys of disconnected or restricted Victorian households. The final report was publicly launched in November 2004 and has already attracted considerable media interest. Government is also taking a keen interest in the recommendations made in the report. Project value: \$25,520.

Appendix B: Contact Details

Conflict Resolution Research Centre

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Greg Tilse, Civil Law Policy, Department of Justice
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