



11 October 2007

Ms Mary Polis  
Team Leader, Policy and Research  
Victorian Law Reform Commission

Email: [law.reform@lawreform.vic.gov.au](mailto:law.reform@lawreform.vic.gov.au)

Dear Ms Polis,

## **VIC LRC Civil Justice Enquiry – Summary of Draft Civil Justice Proposals as at 7 September 2007- Exposure Draft - Stage 2**

Thank you for your invitation seeking the views of the Institute of Chartered Accountants in Australia (“the Institute”) on the Victorian LRC Civil Justice Enquiry Summary of Draft Civil Justice Proposals as at 7 September 2007- Stage 2 (“Exposure draft”).

We welcome your request that the Institute submit its views on these draft proposals and appreciate the opportunity to provide input.

These views are set out in the attached document. They were prepared by the Institute’s Forensic Accounting Special Interest Group (“FASIG”), a special interest group whose members are most affected by the proposed amendment. FASIG is represented in most states and nationally.

The broad aims of the FASIG are to assist Chartered Accountants to maintain high professional standards when acting as forensic accountants, and to promote a better understanding of the value of forensic accounting services to those groups, such as lawyers and the judiciary, who use or rely upon the work of expert accountants. In doing so, the FASIG brings together Chartered Accountants with an interest in forensic accounting, many of whom have prepared expert reports and testified as expert witnesses.

Should you have any questions in relation to the matters discussed in the attached document, please contact Owain Stone, Victorian FASIG Committee Member, on (03) 86507680.

Yours sincerely,

Bill Palmer  
General Manager  
Standards & Public Affairs Division

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## **Victorian Law Reform Commission Civil Justice Enquiry**

### **Summary of Draft Civil Justice Reform Proposals as at 6 September 2007 – Second Exposure Draft “Exposure Draft”**

#### **Comments By The Institute Of Chartered Accountants In Australia**

We have limited our responses to those areas in which FASIG members have a particular interest.

The Institute welcomes constructive engagement on the use of expert witnesses in the dispute process, as many of its members find themselves providing forensic accounting services in the many different aspects to that process. The Institute, through the Forensic Accounting Special Interest Group (“FASIG”) has been actively involved in the specific reviews that have occurred in various Australian jurisdictions, as well as the wider discussion on the use of expert witnesses, with particular reference to accounting expert witnesses.

Comments on Specific Proposal

#### **Proportion Fees**

The Exposure Draft states:

"In present civil litigation virtually every person and entity other than a law firm is able to charge a fee calculated as a proportion of the amount in dispute. This is routinely done by commercial litigation funders, *some accounting firms providing assistance in connection with litigation*, liquidators and companies providing services in connection with litigation;"

We would like to draw to your attention that the Statement of Forensic Accounting Standards - APS11, which is mandatory for all members of the Institute of Chartered Accountants in Australia and Certified Practising Accountants Australia, which states that:

"23 No part of any fee charged or received, whether directly or indirectly, when acting as an independent accounting expert is to be related to the outcome of a matter or the amount of the damages awarded."

We are therefore concerned that there appear to be some accountancy firms that are not complying with APS11 etc. The Institute welcomes any information in relation to the compliance or otherwise of its members with its standards.

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## **Harmonisation of rules**

We appreciate that there are advantages and disadvantages to the harmonisation of court rules. Not least are the difficulties of achieving consistency between different court lists with different characteristics. However we would encourage, to the maximum extent possible, consultation about, and harmonisation of the rules of evidence and litigation rules not only between courts in one state, but also between courts at similar levels in different states.