

Omni Bridgeway supports calls for regulation

Summary

- **Omni Bridgeway welcomes the opportunity to make submissions to the Parliamentary Joint Committee established to consider regulatory reform of the class action regime and the role of litigation funders**
- **Omni Bridgeway reiterates its recommendations for Australian regulatory reform**

Omni Bridgeway Limited (**Omni Bridgeway**) welcomes the Parliamentary Joint Committee on Corporations and Financial Services (**Committee**) inquiry into class actions and litigation funding¹ and looks forward to participating in a balanced debate about improvements to the Australian class action system and the fundamental role of the litigation funding industry in both protecting claimants' rights and providing access to justice.

As the pioneer of litigation funding in Australia, Omni Bridgeway is a supporter of additional regulation that would improve the class action system, deliver better outcomes for all participants and prevent opportunistic and unnecessary litigation. This would include the introduction of a licensing regime for litigation funders and a legislated minimum level of returns for claimants in a class action.

Omni Bridgeway looks forward to making a submission to the Committee and, if required, would be pleased to appear at any open hearings.

Omni Bridgeway agrees with the view expressed by both the Australian Government and the Opposition, that the class action system must deliver fair and equitable outcomes for all participants, particularly claimants. The company advocates, consistently with its submissions to previous inquiries, for a number of measures that it believes would enhance the integrity of, and improve confidence in, the class action system.

These measures include:

- Introducing a six-month moratorium on new class actions that are associated with COVID-19-related disclosures. This is not to condone misbehaviour at the cost of others but to provide companies, directors and individuals with a period to manage the pandemic;
- Introducing legislation to guarantee a minimum return to group members in a class action of no less than 50 per cent of the proceeds from the action;

¹ Attached to this announcement is the media release from The Hon. Christian Porter MP, Attorney General and Minister for Industrial Relations and Leader of the House dated 13 May 2020 entitled *"Improving justice outcomes for class action members"*

- Introducing a licensing regime for litigation funders that would include minimum onshore capital adequacy requirements, disclosure obligations and reporting standards; and
- Introducing legislation to end the use of common fund orders and prevent the introduction of contingency fees for lawyers, as proposed by the Victorian Government. This would ensure that only claims which are genuinely supported by enough engaged claimants, rather than funders or lawyers alone, are commenced.

The company will provide further detail about these measures, and others, in its submission to the Parliamentary Joint Committee.

Omni Bridgeway notes recent criticism of the role of litigation funders. While some of the criticism of the industry may be valid, the company believes much of it is based on misinformation.

Omni Bridgeway is currently involved in 14 Australian class actions, of which five are on behalf of shareholders. The company has not commenced funding an Australian shareholder class action in more than 12 months.

Further information regarding the litigation funding industry and Omni Bridgeway's position on potential regulatory changes can be found at [Class Action Centre](#).

Omni Bridgeway background

Omni Bridgeway is a global leader in dispute resolution finance, with expertise in civil and common law legal and recovery systems, and operations spanning Asia, Australia, Canada, Europe, the Middle East, the UK and the US. Omni Bridgeway has built its reputation as a trusted provider of funding solutions and offers end-to-end dispute finance from case inception through to post-judgment enforcement and recovery.

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Improving justice outcomes for class action members

Media Release

13 May 2020

Ensuring Australians get their fair share of legal settlements will be the focus of a parliamentary committee inquiry which will examine all aspect of the class action system, including the enormous profits being made by litigation funders.

"There is growing concern that the lack of regulation governing the booming litigation funding industry is leading to poor justice outcomes for those who join class actions, expecting to get fair compensation for an injury or loss," Attorney-General Christian Porter said.

"In many cases, funders are taking up to 30 per cent of legal settlements, leaving the members of the action to fight over the scraps that remain once legal fees and other costs are paid."

"In fact, the Australian Law Reform Commission found that when litigation funders were involved in a class action, the median return to class members was just 51 per cent, compared to 85 per cent when a funder was not involved."

"That is clear evidence that the system is not delivering fair and equitable outcomes for those mums and dads who join class actions, and it demonstrates why an inquiry into all aspects of the system is needed."

The Parliamentary Joint Committee on Corporations and Financial Services will be given broad terms of reference, which include examining the consequences of Labor's decision in 2012 to exempt litigation funders from licensing requirements and prudential supervision. In the seven years following that decision there has been a threefold increase in the commencement of class action cases.

A motion to refer the inquiry to the Committee will be considered by the House of Representatives today. Other issues to be examined include:

- the potential impact of Australia's current class action industry on vulnerable Australian business already suffering the impacts of the COVID-19 pandemic
- the likely future impact on the broader economy if class actions cases continue to grow at their current rate;
- the financial and organisational relationship between litigation funders and lawyers acting for class action members, and;
- the potential impact of a Victorian plan to allow lawyers to charge contingency fees.

"Justice is not a business and the primary focus of those who work in the legal system should always be on getting the best outcomes for their clients, not on maximising returns for hungry shareholders," the Attorney-General said.

"I hope this inquiry will generate useful insights that will enable us to develop policies that will ensure the interests of Australians are better protected."

The Committee will be asked to report back to Parliament by 7 December and its work will complement the work already done in this area by the Australian Law Reform Commission.

The Government will shortly release its response to the ALRC inquiry.

- [House of Representatives — Notice of Motion — 13 May 2020 \[PDF 290KB\]](#)

HOUSE OF REPRESENTATIVES

NOTICE OF MOTION

MEMBER FOR PEARCE: I give notice that on the next day of sitting I shall move that the following matter be referred to the Parliamentary Joint Committee on Corporations and Financial Services for inquiry and report by 7 December 2020:

Whether the present level of regulation applying to Australia's growing class action industry is impacting fair and equitable outcomes for plaintiffs, with particular reference to the following:

- (1) what evidence is available regarding the quantum of fees, costs and commissions earned by litigation funders and the treatment of that income;
- (2) the impact of litigation funding on the damages and other compensation received by class members in class actions funded by litigation funders;
- (3) the potential impact of proposals to allow contingency fees and whether this could lead to less financially viable outcomes for plaintiffs;
- (4) the financial and organisational relationship between litigation funders and lawyers acting for plaintiffs in funded litigation and whether these relationships have the capacity to impact on plaintiff lawyers' duties to their clients;
- (5) the Australian financial services regulatory regime and its application to litigation funding;
- (6) the regulation and oversight of the litigation funding industry and litigation funding agreements;
- (7) the application of common fund orders and similar arrangements in class actions;
- (8) factors driving the increasing prevalence of class action proceedings in Australia;
- (9) what evidence is becoming available with respect to the present and potential future impact of class actions on the Australian economy;

- (10) the effect of unilateral legislative and regulatory changes to class action procedure and litigation funding;
- (11) the consequences of allowing Australian lawyers to enter into contingency fee agreements or a court to make a costs order based on the percentage of any judgment or settlement;
- (12) the potential impact of Australia's current class action industry on vulnerable Australian business already suffering the impacts of the COVID-19 pandemic;
- (13) evidence of any other developments in Australia's rapidly evolving class action industry since the Australian Law Reform Commission's inquiry into class action proceedings and third-party litigation funders; and
- (14) any matters related to these terms of reference.