

03/08/2018

Australian Law Reform Commission
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class-actions@alrc.gov.au

Dear Sir/Madam

RE: CBUS SUBMISSION TO THE INQUIRY INTO CLASS ACTION PROCEEDINGS AND THIRD-PARTY LITIGATION FUNDERS

Thank you for the opportunity to provide a submission into this inquiry.

About Cbus

Cbus is the leading Australian Industry Super Fund for all those working in the building, construction and allied industries. As one of Australia's largest super funds, we provide superannuation to more than 755,000 members and we manage over \$43 billion of our members' money.

Cbus is a significant investor in the Australian economy and also globally. Our sole purpose is to provide strong investment returns for members, for their benefit in retirement. Cbus is a leader in direct investment in property, creating a virtuous circle where part of our members' retirement savings is invested into their industry creating jobs today and a secure retirement tomorrow. Cbus is proud to have delivered an average return of 9.24% per year to our members over the past 33 years.

Recommendations

Cbus has participated in numerous class actions, as a class member, over the years and has drawn on this experience in our response. Fundamentally, Cbus seeks an open class action system rather than the current closed model that has evolved in Australia.

We are supportive of Proposal 3-1, Proposal 3-2, Proposal 5-3, Proposal 6-1, Proposal 7-1 and Proposal 8-1. We believe these will help to address the following issues:

- i) the potential for numerous (and ultimately, vexatious) actions where companies to accept and settle claims due to the high financial cost of litigation, rather than the merits of the claims;
- ii) the lack of alternative options for potential claimants to participate or for companies to resolve claims;
- iii) the lack of transparency for investors to assess the nature of the class action prior to sign on; and
- iv) the entrance to the Australian market of third-party litigation funders and the lack of transparency around these organisations, including as to their bona fides, resources and capital adequacy.

The issues described above can lead to numerous and often competing class actions against the same company. This leads to a no win situation for investors in that company, including our members as indirect investors, where the amount received by class action members in

compensation may not offset the loss incurred by the company, including from potential impacts to reputation, from the payment of the compensation itself, together with legal fees adverse costs orders or settlements, and the resulting reduction in share price.

We do not support Proposal 1-1 to review Australia's continuous disclosure obligations and misleading and deceptive conduct laws. The issues that have arisen, and which this inquiry largely seeks to address, have evolved as a response to the way Australia's shareholder class action system itself has evolved. As an asset owner, Cbus seeks greater transparency from companies in the way they operate to ensure information is available to make informed investment decisions. We would not support any measures that reduces company disclosure.

If you have any questions of us or would like further information please do not hesitate to contact Tristan Douglas [REDACTED] in the first instance.

Yours sincerely

Nicole Bradford
Portfolio Head, Responsible Investment