



Thursday 30 August 2018

The Australian Law Reform Commission

Via email: class-actions@alrc.gov.au

RE: Class action proceedings and third-party litigation funders

I write regarding the inquiry into class action proceedings. This submission is supplementary to CHOICE's submission dated 30 July 2018. This supplementary submission is focussed on proposal 8-1 in the Discussion Paper, regarding the establishment of a Federal collective redress scheme to enable corporations to provide appropriate redress to those who may be entitled to a remedy. CHOICE supports this proposal, and recommends the Federal Government consider options for implementing such a scheme. The class action system provides consumers with access to justice that may otherwise be unavailable due to costs. A collective redress scheme could complement the class action system, providing consumers with another low-cost means of accessing a remedy.

CHOICE supports Consumer Action Law Centre (CALC)'s submission to this inquiry, regarding the principles that should guide the design of a collective redress scheme. In particular, we draw attention to and endorse CALC's recommendations that a collective redress scheme:

- Adopt the principles in the Australian Securities & Investments (ASIC) Regulatory Guide 256 on advice client review and remediation (ASIC RG256);
- Provide full redress to consumers;
- Ensure a wide scope;
- Proactively locate all affected consumers;
- Include cy prè powers to benefit the class as a whole where consumers cannot be located;
- Ensure timely remediation;
- Stop time running on limitation of actions periods; and
- EDR schemes should administer voluntary redress schemes where appropriate.

In terms of design principles generally, CHOICE is of the view that proposal 8-1 could be approached similarly to External Dispute Resolution (EDR) schemes. In particular, we note that the Final Report of the Review of the financial system external dispute resolution and complaints framework (the EDR Review) identified a number of problems that should be avoided in the design of any new redress

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schemes.¹ Many of these are captured in CALC's recommendations above. In particular, the EDR Review drew attention to the inadequacy of the monetary limits and compensation caps that restrict the redress that consumer could receive via the schemes.² Echoing CALC's recommendation above, CHOICE is of the view that it is vital that any collective redress scheme should provide full redress to affected consumers, unrestricted by caps or limits.

We also note that establishment of a collective redress scheme or schemes would impose additional responsibilities on regulators such as ASIC and the ACCC. For a scheme to function effectively without reducing regulators ability to perform their other functions, it would be important for regulators to receive additional funding.

For further information please contact CHOICE.

Yours sincerely,

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¹ April 2017, The Treasury, 'Final Report: Review of the financial system external dispute resolution and complaints framework', via

https://static.treasury.gov.au/uploads/sites/1/2017/06/R2016-002_EDR-Review-Final-report.pdf

² Ibid, p9.