



# **Investor Claim Partner Pty Ltd**

**Submission to Treasury**

**Consultation Concerning  
Guaranteeing a Minimum Return of Class Action  
Proceeds to Class Members**

**THE POTENTIAL DOWNSIDE FROM THIS BILL  
DWARFS THE POTENTIAL UPSIDE**

25 June 2021

## 1. Introduction

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- 1.1. Investor Claim Partner Pty Ltd (**ICP**) is thankful to Treasury for the opportunity to make this submission to the Treasury's consultation concerning guaranteeing a minimum return of class action proceeds to class members.
- 1.2. I am the Chief Executive Officer and founder of ICP, Managing Director of ICP Capital Pty Ltd (**ICP Capital**), ICP Funding Pty Ltd (**ICP Funding**) and the Chair and co-founder of the Association of Litigation Funders of Australia (**ALFA**).
- 1.3. After obtaining a Bachelor of Commerce from the University of Melbourne and a Bachelor of Laws from the University of Sydney, I practiced law predominantly in the area of commercial litigation for 10 years.
- 1.4. In 1996, I founded Insolvency Management Fund Pty Ltd (**IMF**) to fund insolvency claims around Australia.
- 1.5. In 2001, I co-founded and was an inaugural director of IMF (Australia) Ltd (now Omni Bridgeway Ltd) and remained a director until 2015 (being the Managing Director between 2004 and 2008). Whilst at Omni, I was directly responsible, amongst other claims, for the due diligence on the Wivenhoe Dam claim against the State of Queensland which has achieved a judgment of \$440m and proceeds against Seqwater for a greater sum.
- 1.6. In 2014, I was appointed Managing Director of Bentham Europe Limited, now called Innsworth Advisors Ltd, which manages the funding of, amongst other claims, shareholder claims in the United Kingdom and Germany for shareholders of Tesco and Volkswagen, respectively with the Volkswagen claim being for in excess of €2.3bn; an amount greater than the total compensation paid in Australian shareholder claims to date. I left the board of Innsworth in 2015 but was reappointed to that board in 2016; an appointment I continue to hold.
- 1.7. In 2016, I founded ICP and in 2017, 2018 and 2020, I founded ICP Capital, ICP Funding and CASL Governance Ltd, respectively, to predominantly fund class actions.
- 1.8. I joined the board of Public Interest Advocacy Centre Limited in 2015; an appointment I continue to hold.

## 2. Submission

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- 2.1. ICP does not propose in this submission to address all matters raised by Treasury in its consultation. Rather, the short submissions below seek to address broader considerations that have not been the subject of inquiry to date, either previously or in this inquiry.
- 2.2. In order to protect the rule of law, our courts need to be accessible to facilitate enforcement.
- 2.3. Equality of arms is a prerequisite for access to justice in our “Rolls Royce” adversarial civil justice system.
- 2.4. There has been no adequate inquiry into the potential ramifications of the proposed cap on access to justice and the rule of law; particularly in regard to the interests of consumers, workers, investors and the markets within which they are affected by unlawful Corporate and Government behaviour.
- 2.5. These interests, spelt out in the purpose and objectives of Parliamentary legislation and the common law and enforced in class actions, are not limited to obtaining compensation when unlawful conduct causes loss.
- 2.6. In addition to putting at risk the billions of dollars that flow to class members from funded claims for the reasons noted in other submissions, any proposed cap on funder’s fees has the potential, if not the likelihood of:
  - (a) diminishing equality of arms, access to justice and therefore enforcement of our laws;
  - (b) diminishing the deterrent affect created by these laws;
  - (c) increasing unlawful behaviour; and
  - (d) increasing the damage caused to millions of Australians by this behaviour (the **“Unintended Consequences”**).
- 2.7. These Unintended Consequences, not yet the subject of any adequate inquiry, have the potential to dwarf the perceived upside of a cap on funder’s fees.

John Walker

Director

Investor Claim Partner Pty Ltd

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