

Submission: Litigation funding and the regulation of the class action industry

Submitter: Operation Redress Pty Ltd

Franchise Redress, Toll Redress, Wage Theft Australia | Michael Fraser, Maddison Johnstone

Introduction

Operation Redress is an organisation centred around advocating for consumer and worker rights. We are most known for our work in the franchise sector (Franchise Redress). We have also advocated loudly for toll road consumers as Toll Redress. Most recently, we formed Wage Theft Australia, although we have been exposing underpayment and wage theft for many years. We are not affiliated with any union/s.

In 2015, our co-founder Michael Fraser helped to expose systemic wage theft at 7-Eleven. His and Fairfax/4 Corners' investigation led to the uncovering of a brutal franchise model that left many small business owners unable to afford to pay their staff according to the legal wage. Off the back of this work, 7-Eleven franchisees are currently involved in a class action lawsuit which has a funder.

In 2017, we helped to expose worker underpayment at Domino's Pizza. In 2019, a worker launched a class action with a litigation funder against Domino's Pizza Head Office, which is ongoing. It would be unlikely that this action would ever get off the ground without a funder providing security for costs and covering the many other expenses. A class action is also being investigated for the Domino's Pizza franchisees.

In late 2017, we helped to expose numerous systemic issues at Retail Food Group, owner of famous Australian brands such as Donut King, Michel's Patisserie, Gloria Jean's Coffees, Brumby's Bakery, Crust Pizza and Pizza Capers. The PJC of the recent Inquiry into the Operation and Effectiveness of the Franchising Code of Conduct recommended that Retail Food Group and their current (at the time) and former directors be investigated by the ACCC, ASIC and the ATO.

However, franchisees were still left in the lurch. We remain in contact with hundreds of Retail Food Group franchisees who are financially destitute, some who were forced to sell their family home, and continue to be mentally scarred from their time as an RFG franchisee. A class action with a litigation funder has been announced for Michel's Patisserie franchisees but not yet filed. Changing the litigation funder laws to suit corporate agendas would be disastrous for franchisees like those who have struggled for years at RFG.

A class action is also being investigated against the toll road operator Transurban.



What Class Actions Mean For the Battler

Many of the people we advocate for can be classed as Battlers. Some are migrants trying to make an honest living in Australia, but are scammed or misled into buying unprofitable franchises of which Australia is littered.

Without access to money or resources, franchisees who find themselves the victims of misconduct often cannot afford legal help, and the ACCC does not resolve individual complaints. We have found that franchisees can be unaware that the problems they are experiencing are systemic within the company.

Grouping finances together to fund a class action is still often not enough for franchisees or workers to go to trial. It also creates headaches for workers and franchisees trying to determine how much each person should contribute considering their investment level and how much they have each lost.

This is where litigation funders are essential. Litigation funders are an equalising force against big business and the resources of the employer.

Lobby groups appear to ignore how vital it is for workers, franchisees and consumers to have access to litigation funders so that companies engaging in systemic misconduct are held to account. If their argument is that there are too many class actions and introducing red tape for litigation funders will reduce the amount of class actions, then they must accept that big business will escape accountability resulting in misconduct flourishing.

In conjunction with trying to strip workers of their rights and entitlements, some lobby groups have positioned themselves as anti-worker organisations and their intentions and membership lists should be heavily scrutinised and questioned.

While big business might create jobs in the economy, they are not the only important players. Battlers deserve to have access to the same resources and finances when fighting for their rights under Australian Law.

Why Litigation Funding

Our concern as advocates for workers, franchisees and consumers in Australia is that litigation funders will find Australian class actions to be less appealing, and may begin to stop funding actions where big business has failed to follow not just the laws of our land, but also the moral compass shared by most.

To uphold our values and ethics as a society, and to promote fairness and equal opportunity for all, means enabling litigation funders to continue to fund class actions as they currently are.

If big business or multi-national companies are afraid to do business in Australia because they are concerned they will break the law-- either by underpaying their workers or misleading consumers-- and that compensation will be sought by consumers or workers through having access to litigation funders, then that is good news. That means that in their current form, our laws are protecting our workers and our consumers from foreign corporations intending to operate outside of the law and without ethics.

A rise in class actions over the past decade does not mean the matters are frivolous or without merit. It could mean that everyday people are increasingly refusing to accept corporate misconduct as the norm and are willing to stand up for themselves and others. It is a noble and brave thing to do.

It is not about creating a more litigious society. If that is the concern, then we only need to look at the frequency at which big business sues each other, small business, workers or franchisees, and determine how to discourage this litigious behaviour. Particularly during the times of COVID-19, where unemployment is high and a number of small businesses are struggling.

It should also be said that our (limited) experience in helping bring class actions to fruition is that it is difficult, time-consuming, and already faces internal and external barriers.

Final Word

Class actions with litigation funders play a significant part in equalising David and Goliath.

It is our hope that the Committee strongly considers the experiences, availability of resources, and financial inequality of franchisees, workers and consumers when putting forward their Recommendations.