

Class Action explosion
ABC NEWS 24
Ai Group Chief Executive, Innes Willox, and Ros Childs
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CHILDS: A day after the announcement of what could lead to Australia's largest class action over PFAS contamination, the Australian Industry Group is taking aim at what it says is an explosion of similar lawsuits. The employer group says a lack of regulation means overseas litigation-funders are flocking to Australia to make often speculative claims, and they want the Federal Government to rein in the industry. Here's the head of the Ai Group, Innes Willox. So, what's your objection to the number of class actions there are here?

WILLOX: What we've seen over the past three or four years is really a huge increase in the number of class actions launched in Australia. So nearly 50% of the class actions in the past 20 years have come in the last three years. And why that is, is because there are very few rules, very few regulations around how and why class actions can be launched in Australia, so this has become very attractive for overseas litigation-funders, particularly from the US and from the UK, to come to the Australian jurisdiction and to launch class actions. You only need to think that there are seven or so people who could be affected by an issue before you can launch a class action in Australia. It doesn't mean that you have them. You just have to think that they are. And if you look at the Federal Court website, you'll see a list of class actions there which essentially law firms are bidding for to run. So, it has become a business proposition for law firms. It has become very attractive for litigation-funders. And we just don't have the rules and regulations around it. We're not saying stop class actions. We're just saying put proper fences around it so it is a properly regulated part of the legal profession.

CHILDS: So what are those fences? What do you want the Federal Government to do?

WILLOX: Well, what's happened here is that this has crept up on Australia. And as the US and the UK have tightened their regulations, Australia has become very attractive. So there's a couple of things: we think that this should be regulated by ASIC, because this is essentially a financial product that's being marketed here. Secondly, we need to increase the number of people who could be potentially affected by a product or a situation before a class action can be launched - not actually taken, but launched. At the moment, as I said, it's just a handful of people. And then there should probably be a process where a predetermination is made, so that a decision is made that, yes, there are grounds for a class action to be followed through before it is.

What's happening now is that insurance costs are being driven through the roof for business. Consumers are suffering as a result. Business is suffering as a result. And you've had insurers leave the Australian market because of

the rise of class actions and what we're also seeing is that money that would be otherwise productively spent is being diverted by business to insurance to try to protect directors and management from class actions. And in the end, insurers quite often fold and that just leads to the circle growing.

CHILDS: But the lawyers Maurice Blackburn, who are currently running around 20 class action cases in Australia – they say the process here has been scrutinised by three independent reviews in the last few years and in the overwhelming majority of cases, they're only launched after careful scrutiny and any payouts are significant because they are a response to bad corporate behaviour. What's your response to that?

WILLOX: Well, what we've got here is a significant growth in this industry and that's what it is – an industry. And it's unregulated. And that's the concern that we have. We're not saying stop class actions. We're saying ensure that there are proper rules and processes around it. What you've essentially now got is a trough for lawyers to wallow in and, you know, we've got to put a stop to that because it's impacting on our economy. It's impacting on business and it's impacting on consumers. There are legitimate class actions that can and should be launched. What you're seeing is essentially jurisdiction-picking by some law firms, where they know they won't have costs awarded against them if they lose that class action. These are the sort of things we need to regulate and tighten. I know the Federal Government is looking at it and it's very welcome that they do.

CHILDS: Innes Willox, thank you.