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Australian Securities and Investments Commission
GPO Box 9827
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1 October 2015

Dear Ms Hawkins

RE: Consultation Paper 238: 'Remaking ASIC class order on employee redundancy funds: [CO 02/314]'

Incolink, as the Trustee Company set up to protect and preserve worker entitlements in the Victorian construction industry, welcomes the opportunity to make a submission to the recently released consultation paper '*Remaking ASIC class order on employee redundancy funds: [CO 02/314]*'. Given the limited time to make a submission we provide the following high level response but would welcome the opportunity to expand on our position at a later stage.

As the Consultation Paper acknowledges the current relief has been in place since May 2000 and after a number of extensions is due to expire in October 2016. Whilst ASIC's preliminary view to extend the relief until October 2017 pending the deliberations of the Royal Commission in to Trade Union Governance is understandable, Incolink believes that it is time to address this matter properly by acknowledging that Employee Benefit Schemes should not be regarded as being 'primarily investment related' and therefore should not be regarded as a managed investment scheme.

Firstly, Employee Benefit Schemes (like Incolink) have a distinct mission that is quite different to managed investment schemes. Employee Benefit Schemes were established to protect workers redundancy entitlements and to ensure a measure of financial security in difficult times. Whilst money is pooled the focus for redundancy funds is on capital preservation rather than promises of capital growth - the focus of managed investment schemes.

Secondly, there must be a clear net public benefit before extending regulation to any industry or area of economic activity. It is difficult to understand what benefit would come from applying the regulatory regime that is applicable to Managed Investment Schemes to Employee Benefit Schemes such as Incolink. The additional reporting and compliance requirements imposed on profit focused Managed Investment Schemes ultimately becomes a cost burden for construction industry participants if they are applied to an Employee Benefit Scheme.

Thirdly, it is not clear what problem would be solved by imposing new regulation on Employee Benefit Schemes. Relief from the operation of the managed investment regime has not been the cause of any concern to the participating employers or worker members at any time over the last 15 years. To our knowledge neither the participating employer members nor the worker members are seeking any review or change to ASIC's current policy of granting the exemptions conferred under CO 02/314.

Finally Regulatory frameworks should be developed to ensure that markets operate efficiently and prevent market failure. Each year Incolink pay out claims of approximately \$100 million dollars in entitlements to thousands of workers. Over a 25 years period there has not been one instance in which Incolink has not had the capacity to meet its liabilities and nor to my knowledge has any other Employee Benefit Scheme failed in this regard.

For the reasons outlined above Incolink strongly believe that the definition of managed investment scheme should be amended to specifically exclude a scheme to which employers make, or are required to make by an award or agreement, contributions where the primary objective of the scheme is to fund redundancy entitlements and other incidental benefits for employees.

I would be pleased to expand on these views at a later date.

Dan O'Brien
Chief Executive