

CALLS FOR LITIGATION FUNDING AND CLASS ACTION REFORM IN VICTORIA

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Legal Briefings - By **Jason Betts**, **Christine Tran** and **Sally-Anne Ivimey**

At the instigation of the Victorian Attorney-General, the Victorian Law Reform Commission (**VLRC**) will conduct a major review of rules governing class actions and litigation funders.¹ Pursuant to terms of reference published on 19 January 2017, the purpose is to ensure that claimants who seek to enforce their rights in funded proceedings are not exposed to unfair risks or disproportionate cost burdens.² It follows a year in which the amount, speed and administration of payments to funded claimants dominated class action headlines, raising access to justice concerns.

The terms of reference are broad, and raise a range of important issues that have been debated intensely in the class action space over the past 12 months.

These include:

- the scope for increased supervisory powers of courts and regulatory bodies over litigation funders, such as clearer disclosure requirements and limits on commission rates;
- removing the prohibition on contingency fees (except in areas currently considered inappropriate, such as personal injury, criminal and family law matters) as a means of mitigating the issues presented by litigation funding practice; and
- importantly, introducing additional rules for class action proceedings (and other similar

proceedings involving representatives), such as certification requirements as a prerequisite to allowing a proceeding to continue, and/or specific criteria for settlement approval.

Currently, litigation funders are subject to minimal regulation and the threshold for commencing class action proceedings is low. In view of the developments and activities in the last 12 months, a review of the current state of play is timely to address concerns of opportunistic claims and to increase the efficiency of class action proceedings.

The report by the VLRC is due 30 March 2018.

ENDNOTES

1. Medial Release from the Attorney-General, [Making Civil Justice Fairer for Victorians](#), dated 16 January 2017,
2. [Litigation Funding: Terms of Reference](#).

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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