

CONTINGENCY FEES SET TO BE INTRODUCED FOR VICTORIAN CLASS ACTIONS

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Legal Briefings - By **Ruth Overington** and **Dylan O'Keefe**

On 27 November 2019 the Victorian Government tabled in Parliament the *Justice Legislation Miscellaneous Amendments Bill 2019 (Vic)* which introduces a new power to permit contingency fees to be ordered in Victorian class actions. If passed, the new law will permit plaintiff law firms to receive a percentage of the damages awarded to all class members.

The rationale for the proposal is to increase access to justice and reduce the financial risk exposure faced by the representative plaintiff. If passed, the new law may lead to an increase in class actions commenced in the Supreme Court of Victoria as plaintiff firms look to take advantage of a more favourable fee structure and smaller actions that may not have attracted funding in the past become more commercially viable.

The Bill proposes amendments to the *Supreme Court Act 1986 (Vic)* to introduce powers of the Supreme Court of Victoria to make 'group cost orders' in class actions. Under a 'group costs orders', the representative plaintiff and class members would share liability for the fees of the representative plaintiff's solicitors and allow those fees to be calculated as a percentage of any amounts recovered in the proceeding. If a 'group costs order' is made, the representative plaintiff's solicitors would also be required to pay any security ordered in relation to the defendant's costs, as well as meet any costs orders made in favour of the defendant if the claim is unsuccessful. The Bill also provides the Court with power to amend a 'group costs order' at any time, including the percentage on which the solicitors' fees would be calculated.

The Bill is not intended to displace the broader prohibition against contingency fees which would remain in place.

The amendments are made in response to recommendations of the Victorian Law Reform Commission (**VLRC**) in its final report 'Access to Justice – Litigation Funding and Group Proceedings' published in March 2018. The VLRC's recommendations were intended to remove barriers to the commencement of class actions and promote access to justice in Victoria. For more on the VLRC's final report, see [Class Actions and Litigation Funding](#).

The Bill has received its second reading in the Victorian Parliament and debate has been adjourned to 4 February 2020.

If you have an interest in discussing the development of solicitors' fees in the context of class actions, we would be delighted to arrange an individual session with your teams.

Download Links

[Justice Legislation Miscellaneous Amendments Bill 2019 \(Vic\)](#)

[Explanatory Memorandum to the Justice Legislation Miscellaneous Amendments Bill 2019 \(Vic\)](#)

[Legislative Assembly Daily Hansard – 27 November 2019](#)

[Victorian Law Reform Commission Report 'Access to Justice – Litigation Funding and Group Proceedings' March 2018](#)

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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