

# AUSTRALIAN COURT DECISION WILL SEE A RISE IN THE NUMBER AND SPEED WITH WHICH CLASS ACTIONS ARE COMMENCED, HERBERT SMITH FREEHILLS PREDICTS

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A landmark decision by the Full Federal Court of Australia to allow “common funds” in class actions will pave the way for more cases to commence, of a larger size, and at a faster rate than ever before, according to Herbert Smith Freehills.

The Court’s ruling this week in the *Money Max v QBE Insurance* case means that everyone who benefits in a class action will be required to contribute to the cost of running the action, rather than only those people signed up via a litigation funding agreement.

Partner and class actions specialist Ruth Overington said the decision will have a number of ramifications, including an increase in class action litigation.

“The removal of the need for claimants to enter into funding agreements eliminates one of the key obstacles for funders when they come to decide whether or not to fund a class action. As a result, we would expect to see more ‘open’ class actions which will be of a larger size,” Ruth said.

“There will also be fewer competing class actions being pursued against the same defendant in relation to the same conduct. As a result, we are likely to see funders looking to commence a class action quicker in an attempt to get in before their competitors.

“Without the need to sign up a minimum number of claimants to funding agreements to make the case financially viable, funders will instead be looking to make a decision early as to both the merits of the potential case, and the number of affected persons.”

Funders will need to make these decisions without knowing what rate of commission will be achievable upon settlement or a successful trial because the Court ruled that this would be determined by the Court, not the funder.

Ruth said in making its decision, the Court considered the need to enhance access to justice and ruled that encouraging open class actions would do so.

“This decision is likely the first of many in which the Court will have an increasingly vocal say about the role and value of litigation funders in class actions in Australia,” Ruth said.

Note to editors:

1. The decision in *Money Max Int Pty Ltd (Trustee) v QBE Insurance Group Limited [2016] FCAFC 148* is available on the Federal Court’s website [here](#).
2. A more detailed analysis by Ruth Overington is available [here](#).

## 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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