



CLASS ACTIONS INQUIRY PROPOSES IMPORTANT REFORMS, BUT CALLS FOR MORE REVIEWS

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News

The Morrison Government has received recommendations to introduce a number of changes to Australia's class action regime.

The Parliamentary Joint Committee on Corporations and Financial Services delivered the long-awaited recommendations to parliament on Monday evening, following an investigation that considered whether the current level of regulation applying to Australia's growing class action industry was impacting the fair and equitable outcomes for group members in class actions.

Herbert Smith Freehills class actions partner [Jason Betts](#) welcomed the report, but stressed some of the recommendations do not go far enough.

"The recommendations offered to the Government could help address some of the uncertainty that has been impacting the class actions industry over recent years," Mr Betts said.

"But after several reviews and inquiries into state and federal class action regimes, we need actual legislative reform to introduce clarity and consistency across jurisdictions.

"While litigation funders have been enjoying substantial financial benefits through the class action regime, these recommendations suggest some steps towards balancing returns in favour of class action groups.

"But on issues such as multiplicity, where defendants are prejudiced by the filing of multiple legal proceedings against them in respect of the same subject matter when only one is required, more will be needed by way of meaningful recommendations for improvements."

The report of the Parliamentary Committee, chaired by the Government's Senator James Paterson, is the third in recent years to examine litigation funding and the regulation of the class action industry in Australia, after inquiries by the Victorian Law Reform Commission (VLRC) and Australian Law Reform Commission (ALRC) in 2018.

Herbert Smith Freehills class actions partner [Christine Tran](#) said the recommendations providing courts with additional powers were positive. These include express powers to make class closure orders, common fund orders, cost orders against funders and ancillary proposals towards enhanced oversight.

"There is something for everyone in these recommendations, but that also means they will be open to criticism. It would be unfortunate if the sensible reforms for clarity, consistency and transparency are stymied or further delayed, as these reforms are necessary to improve system efficiency.

"The report is not definitive, as it highlights a number of areas for consultation and investigation. Carefully planning the roadmap for reform is prudent; however, this is the third major review of Australia's class action regime in as many years, yet we still have no sense of when action will finally be taken."

"The call for uniformity across the State and Commonwealth regimes is particularly pertinent to discouraging forum-shopping and rent-seeking. We have started to see this in Victoria with the introduction of group costs orders in mid-2020."

The Committee's report outlined 31 recommendations flowing five days of public hearings, over 130 answers to questions on notice, and in excess of 100 written submissions and replies by academics, class action industry participants and legal firms, including Herbert Smith Freehills.

Topics in scope included contentious but common matters such as the appropriateness of contingency fee arrangements, common fund orders in class actions, the regulation of litigation funders, the level of returns to group members funded and efficacy of the procedural regime in terms plaintiffs and respondents.