

LEADING CLASS ACTIONS FIRM CALLS FOR SENSIBLE REFORM IN FEDERAL GOVERNMENT INQUIRY

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Firm news

In a submission to the Federal Government's Inquiry into the Australian class actions regime Australia's leading class actions defence law firm has called for the continued prohibition of contingency fees and stronger controls over the ability of plaintiffs to launch multiple proceedings against a defendant.

Herbert Smith Freehills has made a submission to the Federal Government's *Inquiry into Litigation Funding and the Regulation of the Class Action Industry*, which seeks to examine whether the Australian class action regime is working effectively.

The Herbert Smith Freehills' submission focuses on three key areas that raise questions of efficiency and cost minimisation in the class action system in Australia: multiplicity of proceedings, class closure and contingency fees.

Herbert Smith Freehills class actions partner [Jason Betts](#) said there are many different views about Australia's class actions regime, but that Herbert Smith Freehills' submission focused on aspects that public debate has often overlooked, such as how to regulate the growing phenomenon of competing class actions.

'We've been concerned with the practice of multiple plaintiffs and/or funders competing for the right to sue defendants in class actions proceedings,' Mr Betts said.

'There's no persuasive 'access to justice' justification for multiple competing class actions. In fact, multiplicity leads to inefficiency, unnecessary costs and delays while creating prejudice for defendants having to combat multiple exposures and tail risk.

'We've therefore proposed a reform that would seek to limit the ability of competing class actions to be commenced.

'We've also proposed legislative amendments to put beyond doubt that courts have appropriate power to make 'class closure' orders, which will permit parties to class actions to prepare for mediation and settlement with an understanding of which group members are intending to participate in the claim.'

Herbert Smith Freehills class actions partner [Christine Tran](#) said class actions have always generated wide-spread public interest and debate in Australia, and that recent calls for the introduction of contingency fees were amongst the most controversial and hotly debated.

'Calls to introduce contingency fees in Australian class action proceedings create understandable concerns for corporate Australia,' Ms Tran said.

'The 'access to justice' foundation for contingency fees is weak in the Australian context and we are concerned to ensure an careful debate as to the appropriateness of lifting the current prohibitions in Australia on contingency fees.

'Australia's modern class action regime was introduced more than 28 years ago, and during that period more than 630 class actions have been commenced in Australia, with more than a third of those commenced in the last five years alone.

'With the number of class actions on the rise in Australia, we need to get the procedural regime right to make sure the system is fair.'

Herbert Smith Freehills has defended more class actions than any other law firm in the country, including some of the largest securities and product liability class actions in Australia.

The Federal Government is due to report on its findings on 7 December 2020.