

WEBINAR: THE STATE OF PLAY IN AUSTRALIAN CLASS ACTIONS

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Webinars – By **Jason Betts, Christine Tran and Brock Gunthorpe**

Our webinar explores the key themes from 24 months of class action law reform, legislative activity and judicial decision-making

In a webinar panel hosted by the Law Council of Australia and Australian Academy of Law, some of Australia's leading class actions practitioners, including Jason Betts, Partner, have given their review of the state of the class action industry in 2021.

The discussion, titled *Capital, Regulation and the Public Interest*, took place on 15 July 2021. The panel event was opened by Alan Robertson SC of AAL and chaired by John Sheahan QC.

[Click here to access the recording](#)

The panel was comprised of **Jason Betts**, Partner, Herbert Smith Freehills; **Justin Gleeson SC**, Barrister, Banco Chambers; **Susanna Taylor**, Head of Investments, Asia-Pacific, Litigation Capital Management; and **Rebecca Gilsean**, Principal, Maurice Blackburn.

The panel weighed in on the key themes from 24 months of class action law reform, legislative activity and judicial decision-making, including:

- the incidence and composition of class action claims across Australia's state and federal jurisdictions;
- the availability and extent of the capital market for litigation funding;
- how courts and legislatures have tackled the issue of remunerating funder and legal proponents of class action claims;
- how to address questions of multiplicity and possible inefficiency in the regime; and

- how to produce settlements and legal outcomes that are just for all parties on the record.

‘A PATH THROUGH THE THICKET’

In opening the discussion, Mr Sheahan QC described the past two years in the class action market as unprecedented; suggesting a ‘thicket’ of legal ideas had emerged from:

- recent decisions of the courts which indicated a flexibility and willingness to address problems as they arose; and
- regulator and the government activity to pursue a reform program intended to protect group members from the persons (both funders and law firms) providing the capital to run class action claims.

During the discussion, the panellists covered:

1. **Incidence and Trends:** The recent trends in filings and claim types and the possible drivers for the variations, including the regulation of litigation funders, introduction of contingency fees and removal of interlocutory class closure and CFOs.
2. **Capital and Regulation:** The history and growth of litigation funding – an Australian innovation in capital markets – as well as the newly introduced legislative regime, and proposals from ASIC concerning temporary relief to aspects of the regime.
3. **Claim funding through CFOs and GCOs:** The decisions of the High Court of Australia (and other courts) concerning whether common fund orders (**CFOs**) can be made at an interlocutory or later stages of proceedings, and the Victorian innovation of the group cost orders (**GCOs**) to permit law firms to run cases on contingency.
4. **Efficiency and Multiplicity:** The history and causes of recent claim multiplicity in the Courts, and how parties at both ends of the bar table can contribute to reducing the high transaction costs in resolving class action claims in Australia.
5. **Mandatory group member recoveries:** The recent emergence of parliamentary interest in a 70% guaranteed minimum return to group members in class action proceedings, and the merits and detriments of that reform.
6. **Class Closure:** The extinction and (potential) revival of forms of interlocutory class

closure in the Federal Court as a means of giving all parties certainty around settlement parameters in attempts to compromise class action claims.

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