

Wednesday, 29 July 2020

Litigation funding for class actions promotes access to justice, but contingency fees are problematic

Australia's class action regime, including the role of litigation funding, has been an effective and reliable means of delivering access to justice, but contingency fees create undesirable ethical risks, the Law Council of Australia has told a parliamentary inquiry today.

The Law Council of Australia President, Pauline Wright, told the Inquiry into Litigation Funding and the Regulation of the Class Action Industry, that while Australian class actions were working well, there were opportunities to improve the system.

“Litigation funding can promote access to justice, spread the risk of complex litigation and improve the efficiency of litigation by introducing commercial considerations that will aim to reduce costs,” Ms Wright said.

“We therefore support carefully calibrated regulation of litigation funding, in particular by authorising increased oversight by the courts.

“One particular option is to authorise the courts to make common fund orders, which can encourage competition in the class actions market.

“Experience showed that the competitive pressure introduced by the common fund order regime, had a positive downward impact on commissions charged and increased the transparency of litigation funding arrangements.

“The Law Council also opposes any additional regulation of Australian legal practitioners. Legal practitioners are already among the most regulated professionals in the country. In addition, class action litigation lawyers are subject to additional intensive court oversight of their conduct.”

On the question of contingency fees Ms Wright said the Law Council had formed the view that the positives did not outweigh the negatives.

“On balance, it is the position of the Law Council that contingency fee arrangements should not be supported,” Ms Wright said.

“The Law Council is not persuaded that potential marginal gains in access to justice are outweighed by the risks to the ethical duties of lawyers and the potential effect that any compromise of these duties could have on the interests of class members.”

ENDS

Contact: Dr Fiona Wade, P. 0403 810 865 E. Fiona.Wade@lawcouncil.asn.au