GUARANTEEING A MINIMUM RETURN OF CLASS ACTION PROCEEDS TO CLASS MEMBERS

Submission of the US Chamber of Commerce – Institute for Legal Reform

June 28, 2021

Thank you for the opportunity to respond to the Consultation Paper on the proposal to guarantee a minimum return of class action proceeds to class members released earlier this month.

Introduction

Class actions are an established part of the Australian legal landscape. They allow groups of people affected by a common set of facts or circumstances to collectively pursue compensation. In appropriate cases, class actions provide efficient access to justice.

Litigation funding, particularly of class actions, has also become entrenched in the Australian legal system. While the provision of funding can assist claimants pursue proceedings, they might otherwise be unable to afford, the emergence of the litigation funding industry has come at a high cost to both consumers and the Australian economy.

Litigation funders, many of which are foreign entities operating out of tax havens, and the enormous fees taken by funders and plaintiffs' lawyers have driven an explosion in the number of class actions in Australia.

Each and every year, the number of class actions commenced in Australia increases – as evidenced by the most recent study published by leading global law firm King & Wood Mallesons.[1] While supporters of the class action industry argue that the absolute numbers are low compared to, say, the United States, this ignores the enormous size of many of these actions and the impact they have on Australian businesses and the broader economy.

As the number of class actions has steadily increased, the returns to class members have fallen. This is because the benefits of these class actions are being diverted from class members to the litigation funders and plaintiffs' lawyers.

[1] *Winter is coming: Class action battles surge to new record* King & Wood Mallesons 24 May 2021

Unconscionable fees and commissions have seen the Australian class action system move from providing access to justice to delivering extraordinary returns to investors and lawyers. This is grossly unfair to consumers and must be reversed.

Significantly, it is not just the business community that is making this point. In its submission to the Victorian Law Reform Commission inquiry, the National Union of Workers relevantly stated that "*The legal system is rigged against us…*" when describing a class action outcome which saw the entirety of an award of over $5 million taken by the plaintiffs' lawyers, litigation funders, and others – absolutely nothing went to the class members despite a successful outcome! [2]

While this is obviously an extreme example, the returns to class members, particularly when compared to the amounts taken up by litigation funders in commissions, fees, and other charges, is a real concern – particularly when compared with matters not involving a litigation funder.

Data from the Australian Law Reform Commission's review into class actions determined that the median return to group members in funded matters was just 51% of the settlement award, compared to 85% in unfunded proceedings.

Take, for example, three class actions considered by the Australian Law Reform Commission in its report:

- *Clarke v Sandhurst Trustees Limited (No 2)*[3]*:* A settlement of $16.85 million with $5 million (30%) taken by the plaintiffs' lawyers and another $5.06 million (30%) taken by the litigation funder leaving just 40% for class members.
- *Money Max Int Pty Ltd v QBE Insurance Group Ltd*[4]: A settlement of $132.5 million settlement with $21.8 million (16.5%) taken by the plaintiffs' lawyers and $30.75 million (23.2%) taken by the litigation funder leaving 60.3% for class members.
- *Caason Investments Pty Limited v Cao (No 2)*[5]: A settlement of $19.25 million with 43% for legal costs, 30% taken by the litigation funder (using a common fund order which meant that class members probably were not even aware what was being deducted let alone given an opportunity to object!) leaving a mere 27% for class members.

The fees and charges being taken by litigation funders are delivering extraordinary returns on their investments. Consider what the litigation funders themselves are

[2] Submission 16 to the inquiry National Union of Workers_25-09-17.pdf The Huon Corporation proceedings.
[3] [2018] FCA 511
[4] [2018] FCA 1030
[5] [2018] FCA 527

prepared to admit - the 'internal rate of return' for one confidential litigation funding investment by Omni Bridgeway was a mind watering 2,657%![6]

In large part, this has come about because the litigation funding industry, a significant component of the Australian financial services industry, is essentially unregulated.

A series of inquiries and reports, the most recent conducted in 2020 by the Parliamentary Joint Committee on Corporations and Financial Services' have recommended the regulation of the litigation funding industry. While temporary measures were introduced last year, establishing a comprehensive regulatory regime with an effective regulator is critical.

The proposal to guarantee a minimum return of class action proceeds to class members is a welcome reform. However, it is only part of the solution. The introduction of a guaranteed minimum reform must form part of a comprehensive regulatory regime which is enforced by an effective regulator.

How should the guarantee operate?

At the outset, it must be clearly understood that the guarantee is a guarantee of a minimum return to class members. It must not be seen as the *de facto* standard for assessing the fairness of a return on investment to litigation funders and others.

If this is not clearly articulated in the regulation, there is a risk that funders and others will argue that they should always receive 30% of the proceeds of any action – regardless of the risks they take in running the proceedings and the overall size of the award.

The risk reward ratio is critical. The evidence clearly demonstrates that litigation funders fund actions where they have a high degree of confidence that they will be successful. IMF Bentham, one of the largest litigation funders in the world and a major participant in the Australian market, boasts of achieving a 89% success rate while Litigation Lending Services claimed a success rate of 94%.[7]In assessing what is a fair return on the funders investment, the risk taken by the funder must be taken into account.

Exactly the same approach applies to law firms that conduct class actions on a contingency fee basis in the Victorian Supreme Court.

The overall size of the award is critical. Similarly, the overall quantum of the damages or compensation awarded to class members must be taken into account. The Australian legal system and the courts have been established to deliver justice

[6] [Omni Bridgeway Annual Report 2020] page 30
[7] ASX Investor Presentation September 2019 (IMF) and ASIC Annual Report 2018 (LLS)

and, in the case of the class action system, to fairly compensate those who have suffered a compensable loss.

The Australian legal system and its courts are neither a casino nor an arm of the stock market. Funders and plaintiffs' lawyers are entitled to receive fair and reasonable remuneration for the services they provide to class members. However, that remuneration must reflect the work they perform and the risk they take. They should not be allowed to take a windfall profit from an award of compensation where that award is significant. In other words, while it might be reasonable for the funders and plaintiffs' lawyers to take 20% of an award of $10 million in an appropriate case, it would be grossly improper to allow them to take 20% of an award of $800 million. This is not a fanciful concern – consider the position in the United States where quite extraordinary sums have been taken by class action lawyers acting on a contingency basis.

Risk is a two-way street. A guarantee of a minimum return to class members of 70% may mean that, in some cases, the return to funders and plaintiffs' lawyers is less than they had anticipated or less than that which they invested.

If that is the case, so be it.

The funders and plaintiffs' lawyers have chosen to invest in the litigation with the aim of making a profit. That comes with risks – something they are quick to assert when seeking to justify the current unconscionable levels of return they are receiving. If their assessment of a claim's prospects is wrong, such as they make an error in running the case or the court just does not agree with their argument, they should bear the risk and not the class members. The situation that occurred in the Huon Corporation proceedings referred to by the Australian Workers Union must never be repeated.

The overarching purpose of the class action system and Australian courts is to enable access to justice, not financial returns.

Any implementation of a guarantee must be comprehensive and apply nationally. The Australian class action and litigation funding markets are national markets. Class actions can be commenced in both the state and federal court systems. Federal claims can be commenced in the state courts, and the procedures in all of these courts are essentially identical. More significantly, Australia's cross vesting legislation means that the vast majority of claims can be commenced in any court with a class action procedure, regardless of source of law or geographic connection.

Similarly, both the litigation funders and the large, corporatised, plaintiffs' law firms operate across all Australian jurisdictions.

Both funders and plaintiffs' lawyers will simply follow the money – that is, they will commence proceedings in the court and jurisdiction which they believe will provide the best returns on their investment. The best interests and convenience of their 'clients' are rarely, if ever, considered.

In these circumstances, the mandating of a guaranteed return must be implemented in a way which ensures that it applies in all jurisdictions. It must also apply to cases funded by a third-party litigation funder and those where a lawyer is operating under a contingency fee agreement, however described.

To do otherwise will render the regulation meaningless.

How will this affect the litigation funding market?

While there has been noisy opposition to the proposal to guarantee a minimum return to class members, that opposition has, for the most part, been limited to those with a direct financial interest in continuing the status quo..

While the litigation funding industry, the corporatised plaintiffs' legal firms, and their well-funded lobbyists have claimed that these reforms will severely affect, if not bring an end to, access to justice, there is simply no evidence to support that claim.

Indeed, the contrary is true. In arguing for the introduction of a contingency fee regime in Victoria, the plaintiffs' law firms asserted that they were well placed to compete with the litigation funding industry. They claimed that the introduction of contingency fee agreements would 'cut out the middleman' and lead to a significant fall in the costs to class members.

The empirical evidence reveals that a significant number of law firms have taken up the opportunity to commence contingency based class actions in the Victorian Supreme Court thereby demonstrating that alternatives are available, and there is unlikely to be any reduction in access to justice. Rather, class members will actually receive justice in the form of proper compensation rather than what is left after the funders and lawyers have taken the lion's share.

A graduated approach

It follows from what is set above that a graduated approach to guaranteed class member returns, which takes into account the risk, complexity, length, and likely damages award or settlement to flow from the case should be adopted.

In a straightforward case which is quickly resolved, the percentage of the proceeds flowing to class members may significantly exceed 70%.

Consider the example of a class action that is commenced by a funder and lawyer in circumstances where the defendant has already made it clear that it will compensate victims. This is not unusual; we have seen class actions commenced against the makers of medical devices where they had not only made it clear that compensation would be paid but had actually established a compensation scheme. In these circumstances, the risk to the funder and plaintiffs' lawyers is negligible, the costs of commencing the proceedings is modest, and the defendant immediately concedes liability.

In such a case, the remuneration for funder and lawyer might be minimal – and rightly so.

The courts are well placed to implement this aspect of the proposal – provided an appropriate framework is established to allow the judges to make a proper assessment.

First, the rules must impose an obligation on those acting for both plaintiff and defendant to assist the court by way of full and frank submissions. The defendant and its lawyers cannot be allowed to simply sit on the sideline as disinterested observers.

Second, the court must appoint a truly independent costs assessor to review the costs incurred by both funder and lawyers and then provide a proper and appropriate report to the court.

Third, in most cases, the court should appoint a contradictor – someone who can represent the class members free of the irreconcilable conflicts of interest that beset the funder and plaintiffs' lawyers. This must also involve the imposition of an obligation on the parties to provide full access and cooperation to the contradictor – something we have not often seen in the past.

This need not be a costly process. In need not always involve both solicitors and counsel. In a smaller action, an experienced solicitor could be engaged to provide an expert report to the court for its consideration when determining the appropriate return to the class members.

In our submission, this is a preferable course to attempting to adopt arbitrary classifications of cases or predetermined sliding scale based solely on the quantum of any award.

A guaranteed return is only part of the solution

A guaranteed minimum return to class members is a welcome reform. However, it will not, by itself, resolve the problems associated with the litigation funding industry which have been identified in a series of inquiries and reports.

A critical part of the solution is proper regulation of the litigation funding industry supported by an effective regulator.

In this regard, we endorse and adopt the submission made by Adjunct Professor Stuart Clark AM to the Parliamentary Joint Committee on Corporations and Financial Services' Inquiry into Litigation Funding and the Regulation of the Class Action Industry.

In that submission Prof Clark explained that any licensing scheme must –

(a) be comprehensive and national;

(b) impose minimum qualifications for licensees, including a character test;

(c) impose a non-derogable duty on litigation funders to:

  (i) act in the best interest of their clients;

  (ii) place the interests of their clients ahead of their own; and

  (iii) in circumstances where a conflict arises, prioritise the interests of their clients over their own.

(d) require proper disclosure to clients, potential clients, and the court of the terms of the funding agreement;

(e) require foreign litigation funders operating in Australia to:

  (i) ensure that Australian law governs the funding contract; and

  (ii) irrevocably submit to the jurisdiction of the relevant Australian court.

(f) include a breach reporting requirement along the lines that apply to AFSL holders under the *Corporations Act* and ASIC Regulatory Guide 78. Specifically, a licenced litigation funder must be required to:

  (i) notify the regulator in writing within 10 business days of any significant breach (or likely breach) of its obligations

as a licence holder. This notification obligation should apply to all licence conditions, disclosure obligations and capital adequacy requirements; and

(ii) maintain appropriate breach registers and compliance reporting.

He also made it clear that –

(a) licensed litigation funders must also be subject to prudential supervision to ensure that the funding vehicle has sufficient capital in Australia to satisfy its financial obligations; and

(b) the position of foreign litigation funders raises additional complications beyond simply capital adequacy requirements. These include the ability of a client, or indeed another party, to enforce any orders or judgement made against a foreign litigation funder.

A copy of Prof. Clark's submission is attached to this submission as Annexure A.

Conclusion

Australia's response to the COVID-19 pandemic has been extraordinary. The Australian economy has avoided the fate that has befallen much of the rest of the world in terms of its impact on growth, unemployment, and the financial wellbeing of its people.

The reforms recommended by the Parliamentary Joint Committee on Corporations and Financial Services' Inquiry into Litigation Funding and the Regulation of the Class Action Industry must be implemented. The reforms will both protect consumers and ensure that a small number of foreign litigations funders and plaintiffs' lawyers do not harm that recovery.

We urge the Australian Government to implement the recommendations set out in the report as soon as possible.

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PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

Inquiry into Litigation Funding and The Regulation of The Class Action Industry

Licensing Scheme Submission

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11 June 2020

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Introduction

The case for regulating the litigation funding industry in Australia is overwhelming.

There is broad support for regulation across the Australian community. Indeed, the calls for regulation coming from the business community are not limited to class action defendants. Omni Bridgeway Ltd, the Australian based global litigation funder, has acknowledged the need for a licensing regime to "prevent opportunistic and unnecessary litigation" and protect class members[i].

The calls for regulation are not new.

In 2006, well before the decision in *Fostif* that unleashed the litigation funding industry in Australia, the Standing Committee of Attorneys-General identified the risks that are still being discussed today and canvassed the need for regulation[ii].

In 2014, the Productivity Commission recommended that litigation funders be required to hold a licence which would ensure that they:

(a) can satisfy any liabilities they incur;

(b) properly inform their clients of relevant obligations; and

(c) implement systems for managing conflicts of interest[iii].

In 2018 the Victorian Law Reform Commission recommended the national regulation and supervision of litigation funders in its report *Access to Justice - Litigation Funding and Group Proceedings*[iv].

In June 2018 the Australian Law Reform Commission (**ALRC**) published a discussion paper[v] that noted that there was "… a need to provide protection to consumers and other litigants through a licensing regime for litigation funders.[vi]" The ALRC also stated that it believed that the Australian Securities and Investment Commission (**ASIC**) was "the appropriate regulator" of such a regime[vii].

For reasons that have never been adequately explained, the ALRC subsequently abandoned this position in its final report after vehement opposition to these proposals from ASIC and the litigation funding industry.

The case for regulation has been made out time and again in these reports and elsewhere. No doubt it will be addressed in other submissions to the Committee. Accordingly, for the purposes of this submission I will move directly to consider the design of an appropriate licencing regime.

Licensing Scheme - Requirements

A licensing scheme must –

(a) be comprehensive and national;

(b) impose minimum qualifications for licensees, including a character test;

(c) impose a non-derogable duty on litigation funders to:

  (i) act in the best interest of their clients;

  (ii) place the interests of their clients ahead of their own; and

  (iii) in circumstances where a conflict arises, prioritise the interests of their clients over their own.

(d) require proper disclosure to clients, potential clients, and the court of the terms of the funding agreement;

(e) require foreign litigation funders operating in Australia to:

(i) ensure that Australian law governs the funding contract; and

(ii) irrevocably submit to the jurisdiction of the relevant Australian court.

(f) include a breach reporting requirement along the lines that apply to AFSL holders under the *Corporations Act* and ASIC Regulatory Guide 78. Specifically, a licenced litigation funder must be required to:

(i) notify the regulator in writing within 10 business days of any significant breach (or likely breach) of its obligations as a licence holder. This notification obligation should apply to all licence conditions, disclosure obligations and capital adequacy requirements; and

(ii) maintain appropriate breach registers and compliance reporting.

Licenced litigation funders must also be subject to prudential supervision to ensure that the funding vehicle has sufficient capital in Australia to satisfy its financial obligations.

The position of foreign litigation funders raises additional complications beyond simply capital adequacy requirements. These include the ability of a client, or indeed another party, to enforce any orders or judgement made against a foreign litigation funder.

A comprehensive, national regime

The Australian litigation funding industry has created a national market and created issues that require a national solution. A national solution is required to address a national problem.

The scheme must regulate litigation funders providing funding in relation to proceedings in state and territory courts as well as federal courts.

The scheme must address all aspects of the litigation funding industry. Specifically, the scheme must apply to all third party funding of dispute resolution proceedings including class actions, single plaintiff litigation and arbitrations. It must also be sufficiently flexible to encompass the emerging new modes of litigation financing, for example portfolio financing.

Character and qualifications for licensees

Litigation funders are involved in the promotion, conduct and control of complex, commercially significant litigation in Australia, requiring the imposition of both character and qualification standards.

Litigation funders have effective control over litigation that can have a significant impact on markets and the fate of publicly listed corporations. There is a very real potential for litigation, particularly class action litigation, to be misused. Litigation funders also deal with vulnerable members of the community who often become involved in class action by way of a web-site 'click to sign up' approach with minimal assistance, let alone appropriate, independent legal and financial advice.

Accordingly, a licence must require:

(g) those who are involved in the management and control of the entity to meet a character test based on the 'fit and proper' criteria imposed on the those applying to join the legal profession;

(h) a financial knowledge and skills requirement of the type required of an AFS licensee running a registered scheme; and

(i) a responsible manager who is legally qualified and holds a current practicing certificate.

The requirement for the licensee to have a responsible manager who is legally qualified and holds a current practicing certificate will ensure that the litigation funder can properly monitor and instruct the lawyers it effectively (and sometimes literally) retains on behalf of class members who are not otherwise allowed under the terms of some funding agreements, or are not in a position, to do so.

Conflicts of interest and the duty to act in the client's best interests

While there is broad agreement that conflicts of interest abound in the context of litigation funding, little has been offered by way of a solution.

Litigation funders are required to manage conflicts of interest in accordance with the obligations found in ASIC Regulatory Guide 248 (**RG248**). However, while RG248 purports to impose a robust set of obligations they are, in many respects, illusory. First, there is no mechanism to enforce compliance with the requirements of RG248. Second, there is no requirement imposed on litigation funders to report on a regular basis in relation to their compliance with RG248. Third, there is no meaningful or effective oversight of litigation funders in terms of their compliance with RG248 by ASIC or any other regulator. The author is unaware of ASIC ever investigating a breach of its requirements, let alone taking any enforcement action.

Litigation funders do not owe a fiduciary duty to their clients[viii]. Indeed, some litigation funders have endeavoured to exclude the possibility of such a duty arising as a term of the contract with their clients.

In these circumstances, it is imperative that the licensing scheme require litigation funders to act in the best interests of their client and, when a conflict of interest arises, place the interests of their clients ahead of their own.

This is not a radical proposition. These obligations have been imposed on financial advisors since 2013. More recently mortgage brokers have been obliged to meet the same requirements in response to the findings of the Banking Royal Commission.

Disclosure to clients and potential clients

There is broad agreement that litigation funders must make proper disclosure to clients, potential clients and the courts.

If the concerns that have been identified by earlier inquiries and by the Federal Court are to be properly addressed, litigation funders must be obliged to provide both pre-contractual and on-going disclosure to:

(j) potential clients;

(k) clients; and

(l) the court or tribunal hearing the funded proceedings.

In terms of disclosure to clients and potential clients, the disclosure must be in writing using plain English and disclose the key terms of the litigation funding agreement, including:

(a) how the litigation funder's remuneration (including all fees and charges however described) will be calculated;

(b) how the lawyer's remuneration (including all fees and charges however described) will be calculated;

(c) the decisions which the litigation funder will be entitled to take in the matter and the commensurate removal of decision making power from the claimants or funded parties;

(d) any conflicts or potential conflicts of interest that may arise and the mechanism for dealing with such a conflict;

(e) the use of after the event insurance or other mechanisms to offset the risk of an adverse costs order and the basis upon which they will be funded by the litigation funder;

(f) an estimate of the amount which the funded client may recover in the proceedings;

(g) an estimate of the cost of the proceedings;

(h) an estimate of the remuneration that the litigation funder will receive; and

(i) an estimate of the percentage of the amount that is likely to be recovered by the client that will be paid to the litigation funder and the lawyers.

As with lawyers, this should be an ongoing obligation that requires the disclosure to be updated whenever there is a material change.

Given the requirements for costs disclosure that are already imposed on lawyers, and the detailed analysis undertaken by litigation funders before they agree to fund any proceedings, this information will be available and should be disclosed. This will enable potential clients of the funder to properly assess the funding agreement that is being offered to them and make an informed decision in relation to the costs and benefits it offers. It will also ensure that clients of litigation funders can make a proper assessment of their options as the matter proceeds.

The litigation funder should also be obliged to provide a copy of the litigation funding agreement to the court at the commencement of the proceedings. Any changes to the funding agreement (including side letters or other limited arrangements) entered into during the course of the proceedings should be provided to the court and other plaintiffs or class members within five working days of the change being agreed or communicated to the client.

Finally, a copy of the litigation funding agreement should be provided to the other parties to the proceedings when the proceedings are commenced if an order to that effect is made by the court.

Foreign entity requirements

A significant number of the litigation funders operating in Australia are foreign entities, some of which have little or no presence in Australia. This raises questions about the ability of their clients to enforce the terms of any funding agreement or take action in the event of a breach of licence conditions.

Foreign litigation funders operating in Australia must, as a licence condition, apply Australian law to their agreements and irrevocably submit to the jurisdiction of the Australian courts.

Oversight and enforcement

Establishing a licencing scheme is pointless in the absence of an effective and proactive regulator. ASIC should be given the role and directed to ensure that it properly discharges its oversight role.

To assist in that task litigation funders must be subject to mandatory breach notification and reporting.

Other Issues

Two other issues should be considered in the context of any licensing regime.

First, the question of whether, and if so to what extent, there should be a guaranteed return to class members. Second, the question of whether, and if so how, returns to litigation funders should be capped.

The two questions are, of course, related.

At least one litigation funder has endeavoured to pre-empt the debate by proposing that class members be guaranteed a return of not less than 50% of the compensation they are awarded. The balance to be split between funder and the plaintiffs' lawyers[ix].

Unfortunately, caps very quickly become the norm. Consider the right of a lawyer in a 'no-win no-pay' class action where there is a right to charge an 'uplift' not exceeding 25%. When was the last time – if ever – an uplift of less than 25% was charged?

Given the seemingly inexorable growth in the value of Australian class actions there can be no justification whatsoever for class members to be forced to give up anything like 50% of their compensation. To do so would make a mockery of the class action system and guarantee that plaintiffs could never recover anything approaching the loss they have suffered.

Litigation funders are carrying on a business. They are entitled to earn a profit and their investors are entitled to a fair return on their capital. At the same time, they are also part of the civil justice system and utilising public facilities, the courts, to facilitate their business.

Their clients are often amongst the most vulnerable members of our community. They do not have the benefit of independent legal advice and are unable to either negotiate the terms of any funding agreement or look to alternative funders in any meaningful sense.

Australian litigation funders are generating returns that exceed any other asset class and which are accurately described as 'staggering'. Action must be taken to protect consumers – the class members.

The current method of determining a funders commission by the court at the approval stage reference to a simple percentage of the total award does not work. An alternative is required.

First, the returns generated by litigation funders must be limited to something approach a normal return on invested capital (ROIC).

Second, there must be some recognition of the risk involved – although that risk is clearly low given the published data that is available. The time taken to resolve a claim and the extent to which the proceedings are defended are proxies for the measurement of risk. The court is also in a position to make some assessment of that – they effectively do this now as part of the approval matrix.

Finally, in the event that the prohibition on lawyers charging on a contingency basis is removed the same controls must be implemented. It is clear from the material distributed by those supporting the lifting of the prohibition that it will enable lawyers to charge significantly more than the fees they would be entitled to receive under the Legal Profession legislation.

Limits are imposed on the providers of most financial services in terms of the interest rates, fees and charges they can impose on their clients. The fees charged by range of utilities and other services are set or subjected to limits which take into account the economic return on the service providers investment.

There is absolutely no reason why the returns to litigation funders can not be controlled in the same way.

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[i] Omni Bridgeway ASX Announcement 14 May 2020, *Omni Bridgeway supports call for regulation*

[ii] Standing Committee of Attorneys-General, Parliament of Australia, *Litigation Funding in Australia Discussion Paper* (May 2006).

[iii] *Access to Justice Arrangements*, Inquiry Report No 72(2014) vol 2, 601–637; Recommendations 18.1–18.3.

[iv] *Access to Justice - Litigation Funding and Group Proceedings* Para 2.32 and Recommendation 2.

[v] Discussion Paper 85 (DP85).

[vi] Parra 3.4.

[vii] Parra 3.7.

[viii] While the contrary view has been expressed, this is not the position of funders or the courts

[ix] Omni Bridgeway ASX Announcement 14 May 2020, *Omni Bridgeway supports call for regulation*