

MEDIA RELEASE

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Amokura Kawharu
Tumu Whakarae | President

LAW COMMISSION RECOMMENDS NEW CLASS ACTIONS ACT AND COURT OVERSIGHT OF LITIGATION FUNDING

A new Class Actions Act should be developed to improve access to justice and efficiency in litigation, concludes Te Aka Matua o te Ture | Law Commission in its report, *Ko ngā Hunga Take Whaipānga me ngā Pūtea Tautiringa | Class Actions and Litigation Funding*, presented to Parliament today. The Law Commission has also concluded that regulation and oversight of litigation funding is needed in Aotearoa New Zealand.

Amokura Kawharu, Law Commission President and lead Commissioner for the review, said:

“There are significant barriers to accessing civil justice in Aotearoa New Zealand, including the costs associated with litigation. Class actions and litigation funding are not a silver bullet for those issues, but we think they can both make important contributions.”

“While group litigation is currently being brought in Aotearoa New Zealand under the representative actions rule, our review has found this rule is insufficient for modern group litigation. The overwhelming feedback we received was that a class actions statute is necessary.”

“Class actions can improve access to justice and be an efficient way of managing many individual claims. We acknowledge there are some risks and costs associated with class actions and have made recommendations to manage those.”

“Litigation funding can help to address the problems caused by the burgeoning costs of legal advice and litigation in Aotearoa New Zealand. While litigation funding can improve access to justice, we have identified some concerns that require regulation. We considered a range of models for regulating litigation funding and have concluded that court oversight, together with professional regulation of lawyers, is the best option.”

The report makes 121 recommendations for reform of class actions and litigation funding. This includes recommendations for provisions in a new Class Actions Act, new rules in the High Court Rules 2016 and amendments to the Lawyers and Conveyancers Act 2006.

Key recommendations include:

- There should be a new statute called the Class Actions Act as the principal source of law on class actions.

- A case should require court approval to proceed as a class action, a process known as certification.
- Both opt-in and opt-out class actions should be permitted in Aotearoa New Zealand. An opt-in class action requires individuals to actively sign up to the class action to be a class member. In an opt-out class action, persons falling within the class definition are part of the class action unless they opt out by the required date.
- Additional court oversight is needed in class actions to ensure the interests of class members are protected. For example, a settlement of a class action should only be binding if approved by the court.
- In funded class actions, a litigation funding agreement should only be enforceable by a funder if it has been approved by the court. The court should not approve the litigation funding agreement unless it is satisfied the agreement is fair and reasonable and the representative plaintiff has received independent legal advice.
- A public class action fund should be created which can provide funding for plaintiffs.

In developing its recommendations, the Commission has been informed by its consultation, including with government agencies, members of the legal profession, litigation funders, business and community organisations and academics. The review has considered relevant New Zealand law as well as overseas approaches to class actions and the regulation of litigation funding.

The Government will now consider the Commission's recommendations and decide whether to reform the law.

ENDS

Background:

Te Aka Matua o te Ture | Law Commission is an Independent Crown Entity operating under its own statute, the Law Commission Act 1985. It reports to the Minister responsible for the Law Commission. The Commission's statutory purpose is to "promote the systematic review, reform and development of the law of New Zealand". The Law Commission receives its work programme for reform and development work as references from the responsible Minister under section 7 of the Law Commission Act and from Parliament. Visit [lawcom.govt.nz](https://www.lawcom.govt.nz) for more information.

For further information and comment, contact:

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This media release, and the full report are available from our website at: <https://www.lawcom.govt.nz/our-projects/class-actions-and-litigation-funding>

