

# Law Commission - Review of Class Actions and Litigation Funding

## TERMS OF REFERENCE

Class actions enable a group of people with similar claims against the same defendant to have their claims determined in one legal proceeding. Litigation funding is where a third-party with no pre-existing interest in the litigation agrees to fund it, sometimes in exchange for a fee if the action is successful and nothing if the action is lost. Litigation funding is not limited to class actions, but many class actions would be unable to proceed without litigation funding.

The law on class actions and litigation funding in New Zealand is uncertain. High Court Rule 4.24 allows one or more persons to sue or be sued on behalf of, or for the benefit of, all persons with the same interest in the subject matter of a proceeding (commonly referred to as a “representative proceeding”). However, unlike many other jurisdictions, New Zealand does not have a detailed class actions regime. Nor is there specific regulation of litigation funding in New Zealand. The courts have been cautious in permitting litigation funding, as the torts of maintenance and champerty have traditionally restricted its use.

A key benefit of establishing clearer regimes for class actions and litigation funding would be to enhance access to justice. The Law Commission will therefore conduct a first principles review of class actions and litigation funding in New Zealand to ensure the law in these areas supports an efficient economy and a just society; and is understandable, clear and practicable.<sup>1</sup>

The Commission’s review will include, but not be limited to, consideration of the following matters:

### Class Actions

- Whether and to what extent the law should allow class actions;
- If class actions should be allowed, how they should be regulated, for example in relation to:
  - the scope of a class actions regime;
  - the criteria and process for commencing a class action, including how a “class” should be defined;
  - management of class action proceedings; and
  - damages, costs and settlement.

### Litigation Funding

- Whether and to what extent the law should allow litigation funding, having regard to the torts of maintenance and champerty;
- The role of the courts, if any, in overseeing litigation funding arrangements;
- Whether and to what extent litigation funders and/or funding arrangements should be regulated, for example in relation to:
  - the nature and extent of the litigation funder’s recovery;
  - the powers and responsibilities of litigation funders;
  - the potential for conflicts of interest; and
  - disclosure requirements.

For the purposes of this review, litigation funding does not include civil legal aid.

The Law Commission will consult with the public, experts, Māori and other stakeholders during the review.

---

<sup>1</sup> Letter from Minister responsible for the Law Commission to President of the Law Commission regarding Annual Expectations for 2018/2019 (14 May 2018).