SUBMISSION | NEW SOUTH WALES

BAR ASSOCIATION

Inquiry by the Parliamentary Joint Committee on Corporations and Financial Services into litigation funding and regulation of the class action industry

27 July 2020

Promoting the administration of justice

The NSW justice system is built on the principle that justice is best served when a fiercely independent Bar is available and accessible to everyone: to ensure all people can access independent advice and representation, and fearless specialist advocacy, regardless of popularity, belief, fear or favour.

NSW barristers owe their paramount duty to the administration of justice. Our members also owe duties to the Courts, clients, and colleagues.

The Association serves our members and the public by advocating to government, the Courts, the media and community to develop laws and policies that promote the Rule of Law, the public good, the administration of and access to justice.

The New South Wales Bar Association

The Association is a voluntary professional association comprised of more than 2,400 barristers who principally practice in NSW. We also include amongst our members Judges, academics, and retired practitioners and Judges.

Under our Constitution, the Association is committed to the administration of justice, making recommendations on legislation, law reform and the business and procedure of Courts, and ensuring the benefits of the administration of justice are reasonably and equally available to all members of the community.

This Submission is informed by the insight and expertise of the Association's members, including its Costs and Fees Committee. If you would like any further information regarding this submission, our contact is the Association's Director of Policy and Public Affairs, Elizabeth Pearson, at epearson@nswbar.asn.au at first instance.

Contents

A. Executive Summary

1. The New South Wales Bar Association (**the Association**) thanks the Parliamentary Joint Committee on Corporations and Financial Services (**the Joint Committee**) for the opportunity to make a submission to the inquiry into litigation funding and the regulation of the class action industry (**the Inquiry**).

2. The role and impact of class actions in Australia and the fairness of related third-party funding regimes raise complex legal, economic and social justice questions. The Association's submission focuses on two important issues:

   a. First, why lawyers should not be permitted to hold a direct financial interest in the outcome of their clients' cases by entering contingency fee agreements in class actions or any other proceeding;

   b. Second, the need for reforms governing class actions to apply uniformly across Australia.

   Specifically, this submission addresses Terms of Reference 3, 7, 10, 11 and 13.

3. The costs of accessing justice are an ever-pressing concern in our community, however the introduction of contingency fees is no answer. The Association has consistently opposed allowing lawyers to receive contingency fees out of concern that contingency fees cannot be implemented without adversely affecting litigants' interests or lawyers' duties.

4. The Association has warned that enabling lawyers to hold a direct financial interest in the outcome of a case creates a serious risk of compromising the practitioner's fundamental duty to the court, the overriding duty of candour and possibly the lawyer's multiple duties to clients.[1] These concerns are shared by the Law Council of Australia, which resolved in March this year to oppose contingency fees as a matter of principle.[2]

5. The practice of law is, and should remain, a profession driven by ethics, not a business driven by profit. This distinction is basic and important. To extend entrepreneurial litigation to the very person arguing the case is inconsistent with important notions of independence, professional detachment and impartial indifference to the outcome of a case.

6. It is currently unlawful in Australia for lawyers to enter costs agreements under which legal fees are calculated by reference to the amount of any award or settlement or the value of any property that may be recovered in any related proceedings, including under section 183 of the

---

1 See, eg, Tim Game SC, 'Contingency fees must be ruled out', *The Australian* (online), 12 March 2020 <https://www.theaustralian.com.au/business/legal-affairs/contingency-fees-must-be-ruled-out/news-story/5b7015e287de3d6adc79783c44f1485b>; Arthur Moses SC, *The Australian* (online), 5 October 2018 <https://www.theaustralian.com.au/business/legalaffairs/american-model-of-contingency-fees-could-work-here/news-story/040035d9e4f788fe7fe3902e1f5b54fb>.

2 Law Council of Australia 'Contingency fees opposed by Law Council' (Media Release, 13 March 2020) <https://www.lawcouncil.asn.au/media/media-releases/contingency-fees-opposed-by-law-council>.

Legal Profession Uniform Law (NSW, Vic) (***Uniform Law***). The Association considers this should remain the case.

7. Despite the *Uniform Law*, legislation to permit contingency fees to be charged in class actions has been unilaterally proposed and passed by the Victorian Parliament in June.[3]

8. The Association is also concerned that with developments in Victoria and the recent announcement that litigation funders will be required to hold an Australian Financial Services Licence, the regulation of class actions is becoming inconsistent between jurisdictions and increasingly based on piecemeal adjustments that are not linked to an overarching reform of class actions with a view to creating a nationally consistent scheme.

9. Inconsistent and hasty changes to the regulation of class actions in Australia may result in uneven and ill-considered reforms to the conduct of class actions. These may, in turn, result in forum shopping and lead to a "bidding war" between Australia's various jurisdictions that would undermine attempts to create a consistent approach to representative proceedings.

10. The Association does not consider that there is a policy need to allow lawyers to enter into contingency fees arrangements, even to the extent now allowed by the *Justice Legislation Miscellaneous Amendments Act 2020* (Vic) (**the Victorian Act**). To the contrary, the Association is not satisfied that ethical concerns have been sufficiently addressed or safeguards proposed to justify support for contingency fees without significant risk to the administration of justice and public confidence in the legal profession. Importantly, in the Association's view, contingency fees and lawyers' ethical considerations and professional obligations cannot be reconciled.

11. To assist the Joint Committee with its Inquiry, this submission addresses three issues:

    a. the impact and ethical implications of contingency fees;

    b. common fund orders; and

    c. the adverse consequences of unilateral reforms.

B. Recommendations

12. Accordingly, the Association makes the following recommendations:

    a. contingency fees should not, as a matter of principle, be permitted in Australia and the existing prohibitions in Australia's nine jurisdictions should remain;

    b. the Joint Committee should give consideration to and advocate for nationally consistent regulation and supervision of class actions, the litigation funding industry, the remuneration of lawyers for professional work as officers of the court (including disclosure and charging of legal costs) and lawyers' professional standards in conducting class actions.

[3] See Part 2 of the *Justice Legislation Miscellaneous Amendments Act 2020* (Vic).

C. Impact and ethical implications of contingency fees

13. Terms of Reference 3 and 11 concern "contingency fees"[4]. The Association understands this term to mean legal costs are contingent upon a specified event - typically succeeding in ligation - and calculated as a percentage of any amount recovered in the proceedings.[5]

14. Section 183 of the *Uniform Law* currently prohibits lawyers from entering into a costs agreement under which contingency fees are charged. Contravening this section can constitute unsatisfactory professional conduct or professional misconduct and result in a civil penalty.

15. At present, while lawyers are permitted to enter into conditional fee arrangements with clients where legal costs are only payable in the event of success, lawyers may only charge an additional flat amount or percentage uplift *of the usual fee* which may be limited to a prescribed amount.[6]

16. Percentage-based fee agreements are currently prohibited in all Australian jurisdictions by legislation.[7] Any changes to remuneration for professional legal work must be carefully considered in the context of lawyers' ethical obligations and how such changes may affect the proper administration of justice and public confidence in the profession's independence.

17. A legal practitioner is an officer of a supervising court and a provider of professional services. Although acting for a client, the practitioner's paramount duty is to the court. She or he stands in a position of trust with respect to the court and the client, and enjoys significant privileges and public trust in dealing with witnesses and adverse parties.

18. Lawyers are currently remunerated on a fee-for-professional-service basis. The basis of remuneration is largely deregulated but it cannot, as noted above, include taking a percentage stake in the subject matter that the client seeks to realise or protect through the lawyer's services. The level of remuneration that is regarded as proper and can lawfully be charged in any case reflects the lawyer's professional expertise and responsibilities. The lawyer's remuneration may also reflect a client's degree of success in a claim in that the lawyer may agree to forego payment in whole or part depending on the level of compensation awarded. Legislation also permits conditional fee agreements that allow for percentage uplifts of the fees to be paid to the lawyer to be conditional on the client's success.

19. Percentage-based forms of remuneration, however, convert the lawyer into an entrepreneur whose commercial goal is to realise the value of causes of action and who takes a proprietary or quasi-proprietary stake in the proceeds of the action. Contingency fees would inevitably shift the focus of the lawyer's performance of professional functions away from professional responsibility, to instead be the pursuit of profit. This will create, or increase the potential for,

---

4 Sometimes also known as "percentage-based fee" and "damages-based billing".

5 See section 183 of the *Uniform Law*.

6 In NSW the uplift fee in litigious matters cannot exceed 25% of the legal costs (excluding disbursements) otherwise payable: s 182(2)(b).

7 They are also unenforceable under general law as being champertous (see *Re Attorneys and Solicitors Act 1870* (1875) 1 CPD 573, 575 (Jessel MR)) although this is questionable in light of the High Court's decision in *Campbells Cash and Carry Pty Ltd v Fostif Pty Ltd* (2006) 229 CLR 386, which upheld the legitimacy of "pure" funding of litigation.

the lawyer's own interest to come into conflict with the lawyer's duties and the client's interest. The opportunity of contingency fees will result in the client's cause of action becoming an asset of the lawyer's practice. This contrasts with the present situation where the value of a law practice reflects work in progress and goodwill associated with professional reputation and relationships with clients and others who may introduce future work.

20. Victoria has recently introduced contingency fees for plaintiff solicitors in representative proceedings such as class actions. Part 2 of the Victorian Act amends section 33ZD of the *Supreme Court Act 1986* (Vic) to permit the court, on application of the representative plaintiff in a "group proceeding" (i.e. a class action/representative proceeding), to order that "*legal costs payable to the law practice representing the plaintiff and group members be calculated as a percentage of the amount of any award or settlement that may be recovered in the proceeding*" where such an order is "*appropriate or necessary to ensure that justice is done in the proceeding*".

21. The Victorian Act, therefore, would not allow lawyers in Victoria to enter directly into contingency fee agreements. Any percentage-based legal costs payable to a legal practice under the proposals would be by order of the court alone.

22. However, the Victorian Act arguably conflicts with section 183 of the *Uniform Law,* which provides in both NSW[8] and Victoria that:

> A law practice must not enter into a costs agreement under which the amount payable to the law practice, or any part of that amount, is calculated by reference to the amount of any award or settlement or the value of any property that may be recovered in any proceedings to which the agreement relates.

23. A lawyer receiving instructions from a plaintiff to apply for a percentage-based legal costs order under the provisions of the Victorian Act would, in the Association's view, be entering into a contingency-fee agreement.[9]

24. The Victorian Act inserted into the *Supreme Court Act 1986* (Vic) a new section 33ZDA(4) to ensure that proposed "*group costs orders*" have effect "*despite anything to the contrary in the Legal Profession Uniform Law (Victoria)*". The Victorian Act's Explanatory Memorandum acknowledged this is a specific reference to section 183 of the *Uniform Law*.[10]

25. Another difficulty with the Victorian Act is that it is unclear how the new section 33ZDA intersects with the costs indemnity rule, whereby in the proper exercise of the judicial discretion to award costs, the unsuccessful party in litigation is ordered to pay the successful party's costs. It is arguable that the calculation of legal costs as percentage "*of the amount of any award or settlement that may be recovered in the proceeding*" could enable the legal costs payable to the law practice to be calculated by reference to a sum which includes money

---

8 *Legal Profession Uniform Law Application Act 2014* (NSW) s 4.

9 It could be argued that a percentage-based legal costs order as a judicially mandated distribution of the proceeds of a judgment or settlement does not represent an agreement between the parties and consequently cannot amount to a breach of the prohibition on entering into contingency fee agreements.

10 Explanatory Memorandum, Justice Legislation Miscellaneous Amendments Bill 2019 (Vic), 3.

recovered by the successful party from the unsuccessful party by way of party and party costs. While it is doubtful that this is the intention, such a result would appear possible under the Victorian Act as currently drafted.

26. An anterior problem therefore regarding proposals for contingency fees, whether by agreement or by order of the court, in a *Uniform Law* state,[11] for percentage-/damages-based fees, is the terms of section 183 of the *Uniform Law*, which prohibit both contingency fee agreements and also arrangements between lawyers and their clients for contingency fee orders to be sought by way of court order. Furthermore, there remains a need to ensure that any calculation of the legal costs payable by clients to lawyers is not based on amounts recovered by way of party-and-party costs (see the matters discussed in the preceding paragraph).

27. The Victorian Act was passed by the Legislative Assembly in February 2020 and the Legislative Council in June.

28. The Association opposed the Victorian Act because the Association opposes permitting lawyers to receive contingency fees and the Victorian Act creates further disharmony in Australian laws regulating class actions funding.

29. The Association acknowledges that the Victorian provisions are based in part on:

    a. the Victorian Law Reform Commission's (**VLRC's**) recommendation in its March 2018 *Access to Justice—Litigation Funding and Group Proceedings* report (**the VLRC Report**) that the Victorian Supreme Court should be empowered to make percentage-based legal costs orders in representative proceedings; and

    b. the Australian Law Reform Commission's (**ALRC's**) recommendation in its December 2019 report on third-party litigation funding and class actions that solicitors in representative proceedings should be permitted to enter into contingency fee agreements, subject to the supervisory jurisdiction of the court.[12]

    However, the Victorian provisions do not include significant safeguards simultaneously recommended by the VLRC and ALRC. The provisions, for example, do not prohibit the charging of both an hourly rate and a contingency fee, nor do they prohibit there being both a contingency fee award and third-party litigation funder fee in the same proceedings. The provisions are a flawed model even when measured against the recommendations on which it may be suggested they are based.

30. The present professional-service-based remuneration of lawyers should not be abandoned without an exceptionally compelling case justified by public benefit. Questions of the financial viability of contingency fees should, in the Association's view, be secondary to the antecedent question of whether the change to the lawyer-client relationship that would be brought about by the introduction of contingency fees is at all justified.

---

[11] NSW and Victoria, and from 1 January 2021 the *Uniform Law* will also apply to Western Australia.

[12] ALRC, *Integrity, Fairness and Efficiency—An Inquiry into Class Action Proceedings and Third-Party Litigation Funders* (ALRC Report 134), December 2018 (**the ALRC Report**), recommendation 17.

31. The Association is gravely concerned that permitting contingency fees would:

    a. seriously undermine the identity of the legal profession as a profession, with resultant diminution in respect for legal practitioners and their status as members of a profession;

    b. transform the practice of law from a profession into a business by giving legal practitioners a direct, often substantial, financial interest in the outcome of a case;

    c. seriously risk compromising the legal practitioner's fundamental duty to the court, the overriding duty of candour and potentially also the multiple duties owed to clients; and

    d. be inconsistent with important notions of professional detachment and impartial indifference to the outcome of a case by extending entrepreneurial litigation to the very person arguing the case.

32. The Association is sceptical of claims that contingency fees would significantly improve financial outcomes for plaintiffs in class actions.

33. A central argument put forward by those calling for the introduction of contingency fees has been that this would improve access to justice. This argument is superficial and unsupported.

34. There is a dearth of longitudinal empirical evidence that permitting lawyers to receive contingency fees improves access to justice.

35. Without an in-depth analysis of the operation of contingency fee regimes in comparable jurisdictions (including the USA, UK and Canada) that demonstrates that the rule of law (through improved access to justice) is served by permitting lawyers to receive a percentage of judgments and settlements, it is not possible to make any findings as to the impact that the introduction of contingency fees would have on financial outcomes for plaintiffs in class actions. The existing prohibition on contingency fees is well-founded, and the assumptions behind any economic modelling of possible benefits flowing from the introduction of percentage-/damages-based fees should be scrutinised carefully by the Joint Committee.

36. A line needs to be drawn and is most appropriately drawn by reference to the provisions that currently exist for a percentage uplift of fees in the event of the lawyer appearing on a "no-win-no-fee" basis. Those provisions already enhance access to justice for people not able to otherwise afford representation, as does the availability of litigation funding for class actions.

37. The Association strongly recommends that contingency fees should not be permitted, as these risk compromising lawyers' ethical obligations and impacting the proper administration of justice, public confidence in the profession's independence and the justice system as a whole.

D. Common fund orders

38. Term of Reference 7 concerns common fund orders in class actions. Until December 2019, it was the common practice of Australian courts to issue common fund orders (**CFOs**) to the benefit of litigation funders in class actions. CFOs ensured that litigation funders were able to obtain a percentage of all group members' damages in representative proceedings, regardless of whether individual members had entered into a litigation-funding agreement.

39. The policy rationale behind CFOs was largely based on the assumption that, without the prospect of such orders being made, particularly at an early stage in proceedings, litigation funders might be dissuaded from investing in otherwise meritorious representative proceedings. CFOs also resolved the so-called "free rider" problem, namely "*unfunded class members in a class action should not receive more in the hand from a settlement or judgment than funded class members, who effectively financed the proceeding by pooling their promises to pay a funding commission to the [litigation] [f]under*".[13]

40. In December, the High Court by majority concluded in *BMW Australia Ltd v Brewster; Westpac Banking Corp v Lenthall*[14] (***BMW***) that a general power to make orders "*to ensure justice is done in the proceeding*" under section 33ZF of the *Federal Court of Australia Act 1976* (Cth) (***FCA***) or section 183 of the *Civil Procedure Act 2005* (NSW) (***CPA 2005***) authorised neither the Federal Court of Australia nor the NSW Supreme Court to make CFOs at the outset of, or at an early stage in, representative proceedings.

41. *BMW*'s direct effect is that without amendment of the *FCA* and *CPA 2005*, CFOs will no longer be permitted at an early stage, or at all, in federal or NSW proceedings. Since *BMW*, a CFO order has been made by at least one judge of the Federal Court of Australia under section 33V of the *FCA*.[15] Conversely, Foster J refused to make a CFO in *Cantor v Audi Australia Pty Limited (No 5)*[16] as he considered statements made by the *BMW* plurality indicated that neither the Federal Court nor the NSW Supreme Court have the power to make a CFO at any time.

42. As *BMW* was determined solely on the basis of an interpretation of section 33ZF of the *FCA* and section 183 of the *CPA 2005*, the following Constitutional questions raised by the appellants regarding CFOs were sidestepped by the High Court majority:

    a. whether the making of such orders involves the exercise of a non-judicial power with the result that such an order cannot be made by a Chapter III Court or a state court upon which federal jurisdiction has been conferred (the **separation-of-powers issue**); and

---

13 *Caason Investments Pty Ltd v Cao (No 2)* [2018] FCA 527, [161] (Murphy J).
14 [2019] HCA 45.
15 *Uren v RMBL Investments Ltd (No 2)* [2020] FCA 647 (Murphy J). See also *Fisher (trustee for the Tramik Super Fund Trust) v Vocus Group Limited (No 2)* [2020] FCA 579, [72].
16 [2020] FCA 637.

b. whether the making of CFOs that include those who had not previously entered into an agreement with a litigation funder amounted to an unjust appropriation of property in violation of section 51(xxxi) of the Constitution (**the just-terms issue**).

43. The separation-of-powers and just-terms issues were dismissed by Gageler J and Edelman J in separate dissenting decisions in *BMW*.[17] The constitutionality of CFOs has, however, not been definitively resolved by the High Court and similar constitutional arguments could be levelled against percentage-based legal costs orders and court-supervised contingency fee agreements in representative proceedings. While *BMW* prevents the making of CFOs prior to settlement or final judgment, and possibly at any stage, the equitable distribution of damages between funded and unfunded group members can be achieved by other means. As the High Court noted,[18] funding equalisation orders may resolve the "free rider" problem by ensuring "*unfunded group members' awards by an amount equivalent to that paid by funded group members to the litigation funder*".[19]

44. The demise of CFOs at an early stage of proceedings at a federal level and in NSW does, however, deprive the court of a tool to manage competing class actions and control the commission rates within litigation funding agreements. As Beach J noted in *McKay Super Solutions Pty Ltd (Trustee) v Bellamy's Australia Ltd (No 3)*:[20]

> one advantage of early common fund orders was that it assisted to resolve the problem of competing class actions, whether each competing action had their own litigation funder or only one of the competing actions had a funder. For the Court, it did not matter how many group members each had signed up or at what contractual commission rates. If one action was to be the winner, the associated funder had to accept the rate to be ultimately struck by the Court under a common fund order. That was the price the Court, in essence, extracted…
>
> flowing from [*BMW*], [the court] now [has] less flexibility to deal with commission rates... Trial judges need flexible tools to regulate these funding arrangements and to tailor solutions to each individual case. And preferably that regulation should take place closer to the outset of proceedings rather than at the other end, particularly where competing class actions are in play.

45. Without expressing a position for or against CFOs, the Association is sympathetic to Beach J's observation that this issue should be addressed by the legislature sooner than later.[21] If the policy questions raised by *BMW* concerning CFOs and the "calibration" of litigation funding in class actions are to be resolved by legislation, the Association considers that a uniform approach to the equitable distribution of the proceeds of representative proceedings should apply across all Australian jurisdictions to avoid the problem of forum shopping. The question of CFOs post-*BMW* does not, however, have direct bearing on whether contingency fees should be permitted, or provide grounds to reconsider the current prohibition in Australia.

---

17 *BMW*, [119]-[120] (Gageler J); [225]-[230] (Edelman J).

18 Made at the point of a court-approved settlement under s 33V of the *FCA 1976* / s 173 of the *CPA 2005* or as part of a judgment under s 33ZF of the *FCA 1976* /s 183 *CPA 2005*.

19 *BMW*, [86] (Kiefel CJ, Bell and Keane JJ).

20 [2020] FCA 461, [33]-[34].

21 Ibid, [34].

E. Adverse consequences of unilateral reforms

46. This section relates to Terms of Reference 10 and 13. Since the tabling of the ALRC Report in Parliament in January 2019, there have been three significant developments that have had a bearing on class actions, litigation funding and regulation of representative proceedings:

    a. the *BMW* decision which, as discussed above, applies directly only to representative proceedings in the Commonwealth and NSW jurisdictions;

    b. the unilateral introduction of the Victorian Act, which now sets Victoria apart from all other Australian jurisdictions in permitting contingency fees; and

    c. the Commonwealth Government's recent announcement that, three months after 22 May 2020, all litigation funders in Australia will be required to obtain an Australian Financial Services Licence (**AFSL**) and comply with the managed investment scheme regime, under regulations made under the *Corporations Act 2001* (Cth).

47. The Association notes that the ALRC Report's recommendation regarding the introduction of contingency fees in representative proceedings must be seen in the wider context of the ALRC's proposals for the nationally consistent regulation of litigation funders and CFOs in class actions.

48. In acting unilaterally to legislate to permit contingency fees, the Victorian Act runs counter to the ALRC Report's recommendations that a nationally consistent approach should be taken to the regulation of class actions in Australia.

49. The Victorian Act also conflicts with VLRC's Report, which suggested that the Victorian Attorney-General should propose to the Council of Attorneys-General that the Council "*(a) agree, in principle, that legal practitioners should be permitted to charge contingency fees subject to exceptions and regulation*" and importantly "*(b) agree to a strategy to introduce the reform, including the preparation of draft model legislation that regulates the conditions on which contingency fees may be charged and maintains the current ban in areas where contingency fees would be inappropriate*".[22]

50. The Victorian Act is limited to permitting percentage-based legal costs to be paid by order of the Supreme Court of Victoria in representative proceedings, rather than in civil actions more generally. Nevertheless, the Victorian Act may have the following adverse effects.

51. Other jurisdictions may swiftly respond to the Victorian Act by introducing hasty mirror legislation to prevent forum shopping, with such legislative schemes overtaking any general, nationally consistent position on contingency fees.

52. The introduction of contingency fees in class actions and disharmonious reforms to third-party litigation funding might also encourage a "bidding war" between states to provide the most favourable jurisdiction in which to commence representative proceedings.

[22] Recommendation 7.

53. Allowing contingency fees in representative proceedings may also result in contingency fees being permitted in proceedings other than class actions.

54. The removal of any impediment to access to justice or inequity created by *BMW* (if such impediments or any inequities can be said to have been created by the High Court's decision) appears either to be a matter for the judiciary, litigants and third-party funders to navigate or for federal and state parliaments to consider in the context of wider debates about the regulation of litigation funders in representative proceedings.

55. Importantly, as noted above, *BMW* does not have any bearing on whether contingency fees should be introduced in class actions or more generally and, indeed, indicates that the constitutionality of court supervised or ordered contingency fees may, like CFOs, be open to question.

56. The government's decision to require that litigation funders should obtain an AFSL three and half months before the Joint Committee's report is due to be delivered preempts, rather than "complements",[23] this Inquiry's findings and precedes any considered response by the Government to the ALRC Report's recommendations.

57. Inconsistent and precipitous changes to the regulation of representative proceedings will fragment Australia's class-action system. The Association therefore recommends that:

    a. contingency fees should not, as a matter of principle, be permitted in Australia and that the existing prohibition in all of Australia's nine jurisdictions should be maintained;

    b. the Joint Committee should give consideration to and advocate for nationally consistent regulation and supervision of class actions,[24] the litigation funding industry,[25] the remuneration of lawyers for professional work as officers of the court (including disclosure and charging of legal costs)[26] and lawyers' professional standards in conducting class actions.

Conclusion

58. Thank you again for the opportunity for the Association to contribute to this important Inquiry.

[23] The Hon Josh Frydenberg MP, Treasurer, 'Litigation Funders to Be Regulated under the Corporations Act' (Media Release, 22 May 2020).

[24] Recommendations 6, 12 and 14 of the ALRC Report; recommendations 1, 7 and 12 of the VLRC Report.

[25] Recommendation 2 of the VLRC Report.

[26] Recommendations 8, 17 and 19 of the ALRC Report; recommendations 3, 5, 16, 24, 25 and 26 of the VLRC Report.