



THE HON JOSH FRYDENBERG MP
Treasurer

SENATOR THE HON MICHAELIA CASH
Attorney-General
Minister for Industrial Relations

JOINT MEDIA RELEASE

30 September 2021

ENSURING FAIR AND REASONABLE RETURNS TO CLASS ACTION PLAINTIFFS

The Morrison Government has today released for consultation exposure draft legislation to promote a fair and reasonable distribution of class action proceeds in proceedings involving a litigation funder.

If progressed, the legislation would implement key recommendations of the Parliamentary Joint Committee on Corporations and Financial Services in its report on litigation funding and the regulation of the class action industry, including recommendations 7, 11, 12, 13, and 16.

The draft legislation would enhance court oversight of the distribution of class action proceeds between the litigation funder and plaintiffs who are members of a class action litigation funding scheme. Courts would be empowered to approve or vary the share of proceeds to which members of the scheme are entitled to ensure the distribution is fair and reasonable. In making this determination, courts would be supported by independent experts at the funder's expense.

To further protect plaintiffs, the draft legislation would establish a rebuttable presumption that a return to the general members of a class action litigation funding scheme of less than 70 per cent of their gross proceeds is not fair and reasonable.

Finally, the draft legislation would require plaintiffs to consent to become members to a class action litigation funding scheme before funders can impose their fees or commission on them. This will encourage 'book building' and ensure that actions involving litigation funders are commenced with the genuine support of plaintiffs.

The consultation package can be found on the Treasury website. The Government will now consult with stakeholders on the proposed reforms.

This consultation reflects the Government's continued commitment to ensuring successful class action plaintiffs are adequately compensated as well as preventing litigation funders and law firms from taking disproportionate fees in the process.

Ends