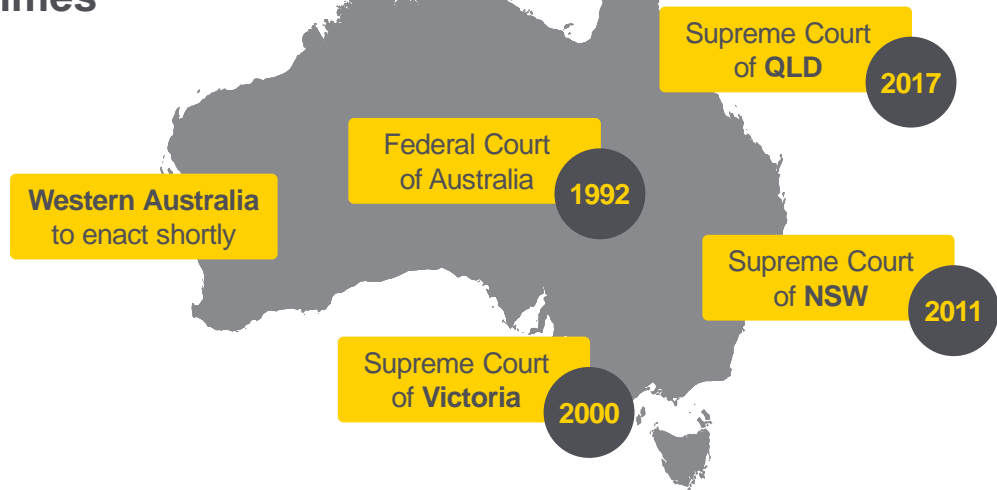




Overview

- The existing class action regime in Australia
- Trends shaping the class action litigation landscape
- Current proposals for class action reform
 - Disruption
 - Types of actions affected by class action reform
 - Stakeholders affected by class action reform
- Cases to watch in 2019

Australian class action regimes



TYPES OF ACTIONS

Disaster class actions	Shareholder class actions and investor class actions	Personal injury (contamination or defective products)
Anti-cartel	Consumer	Claims under the Migration Act
Human rights class actions	Environmental class actions	Trade union class actions

TYPES OF ACTIONS

MinterEllison

Disaster class actions

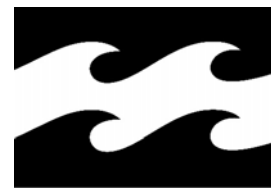


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TYPES OF ACTIONS

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Shareholder class actions and investor class actions



BILLABONG



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TYPES
OF
ACTIONS

Personal injury (contamination or defective products)



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7

TYPES
OF
ACTIONS

Anti-cartel



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8

TYPES
OF
ACTIONS

Consumer



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9

TYPES
OF
ACTIONS

Claims under the Migration Act



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10

TYPES
OF
ACTIONS

MinterEllison

Human rights class actions



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TYPES
OF
ACTIONS

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Environmental class actions



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TYPES OF ACTIONS

Trade union class actions



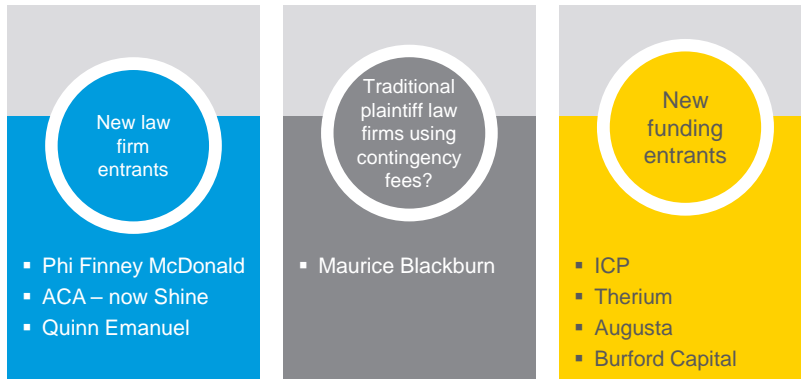
The current class action landscape



ALRC REPORT	NOW	ALRC key recommendations
<p>LITIGATION FUNDERS</p> <hr/> <p>MinterEllison</p>	<ul style="list-style-type: none"> Litigation funders are not required to obtain a license. Many local and offshore funders with undisclosed financial backing operating in Australia. The Federal Court requires litigation funding arrangements to be disclosed to the court, together with the solicitors' costs agreement. The Court does scrutinise funding agreements, but lacks the power to vary the terms of a funding agreement. Existing conflicts of interest obligations – unknown as to whether they are sufficient. 	<p>No license</p> <p>Recommendation 12— Statutory presumption that third-party litigation funders will provide security for costs.</p> <p>Recommendation 13 — Court should be empowered to award costs against third-party litigation funders and insurers.</p> <p>Recommendation 14 — third-party litigation funding agreements are enforceable only with the approval of the Court; funding agreements may be amended by the Court.</p> <p>Recommendation 15 — third-party litigation funders must report annually to ASIC on their compliance with the requirement to implement adequate practices and procedures to manage conflicts of interest.</p> <p>15</p>

ALRC REPORT	NOW	ALRC key recommendations
<p>CONTINGENCY FEES</p> <hr/> <p>MinterEllison</p>	<ul style="list-style-type: none"> Australian solicitors are not permitted to bill clients on a percentage-fee basis, that is, to provide their services in exchange for a percentage of the amount recovered by the litigation. It is common for solicitors acting for the representative plaintiff in unfunded class actions to bill the representative plaintiff using a conditional fee agreement ('no win/no fee' arrangement). Conditional fee agreements usually include an uplift fee of not more than 25% of the billed amount on a successful outcome. 	<p>Recommendation 17— legal profession should permit solicitors to enter into 'percentage-based fee agreements' (class actions only).</p> <ul style="list-style-type: none"> Contingency fees in class action proceedings may enable medium-sized class action matters to enter the market. Medium-sized law firms are likely to enter the class action market. Increased competition between law firms and litigation funders. <p>16</p>

Contingency fees: adding to the expansion of class actions?



ALRC REPORT

COMPETING CLASS ACTIONS

NOW

- No express power to deal with competing class actions, but the courts have deployed a variety of practices:
 - consolidation of proceedings in one single case;
 - selecting one case to proceed and ordering a stay in other proceedings; and
 - permitting multiple class actions to proceed in parallel.

ALRC key recommendations

- Recommendation 1**— All representative proceedings are initiated as open class.
- Recommendation 3** — Express statutory power to make common fund orders on the application of the plaintiff or the Court's own motion.
- Recommendation 4** — Express statutory power to resolve competing representative proceedings.
- Recommendation 5** — Practice Note should be amended to provide a further case management procedure for competing class actions.

Other important recommendation

▪ Regulatory Redress

- Class action regime has not provided access to a remedy for certain types of actions. (e.g. breaches of competition law have been the subject of few class actions. Few cases in discrimination law).
- *Recommendation 23*—The Australian Government should review the enforcement tools available to regulators of products and services used by consumers and small businesses, to provide for a consistent framework of **regulatory redress**.
 - The proposed collective redress scheme is intended to avoid the high costs associated with litigation.
 - Regulatory redress provides an efficient and effective way for consumers and businesses to obtain compensation and reduce the burden on the civil justice system.

Coming up?

First
shareholder
class action to
proceed to
judgment (Myer
class action)

Climate change
and other
environmental
class actions?

Class action by
7-Eleven
franchisees
(approx. 500)
against ANZ

Will the High
Court rule on
competing class
actions? (GetSwift
special leave
appeal
application)

Follow-on class
actions over
regulatory
enforcement &
Royal
Commission



Contact



Beverley Newbold
Partner

T +61 2 9921 4894
M +61 411 275 869

EMAIL beverley.newbold@minterellison.com



David Taylor
Partner

T +61 2 9921 4450
M +61 423 182 320

EMAIL david.taylor@minterellison.com

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