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## **Productivity Commission urged to make litigation funders accountable**

Third party litigators should be required to hold a financial services licence and meet appropriate ethical and professional standards, Governance Institute has told the Productivity Commission.

In a submission on the *Access to Justice Arrangements* draft report, Governance Institute points out that currently not **all** investors are being adequately informed nor are the interests of **all** parties being safeguarded.

“Currently the majority of litigation funders are not licensed, nor are the law firms who act as promoters, yet funded class actions are an accepted mechanism for those seeking recompense,” Governance Institute chief executive Mr Tim Sheehy says.

“This is an unregulated industry where the interests of some can override the interests of many.

“The reality is that there are conflicts of interest in funded litigation. A promoter and/or law firm seeks out and creates an action to further its business, not necessarily the interests of the plaintiffs. Without adequate conflict management arrangements, litigation funders whose interests conflict with those of their clients are more likely to take advantage of those clients.

“While a funder might promise to meet all adverse cost orders made in favour of the defendant, if the funder lacks the financial resources to meet those costs, the representative member of the class may have to. There is a clear incentive for class action promoters to instigate actions regardless of whether they believe the prospects of success are unlikely and regardless of whether they have sufficient funds to meet costs should the action fail,” Mr Sheehy added.

In addition to urging the Productivity Commission to recommend that, subject to capital adequacy requirements, third party litigation funding companies hold a financial services licence and meet appropriate ethical and professional standards, Governance Institute has recommended that any litigation funder be obliged to report any breaches of the arrangements to the regulator.

“They should also be obliged to lodge confirmation with ASIC of all arrangements in place on an initial and ongoing basis so that the regulator can assess the continued adequacy of the arrangements.

“Governance Institute strongly supports consumers being able to readily access the courts but we are equally of the view that promoters of funded class actions must be regulated to ensure all investors are adequately protected,” Mr Sheehy concluded.

# Media Release

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## **About Governance Institute of Australia**

*Governance Institute of Australia is the only independent professional association with a sole focus on the practice of governance. We provide the best education and support for practising chartered secretaries, governance advisers and risk managers to drive responsible performance in their organisations.*

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