
Report pushes limits on litigation funder returns

By **CHRIS MERRITT**,

6:49PM JUNE 14, 2020 •  NO COMMENTS

The failure of successive governments to regulate the litigation funding industry has forced the courts to attempt to fill the gap — imperfectly, according to a new report.

While there have been cases where judges have forced litigation funders to reduce their commission, the Menzies Research Centre says the courts have been focusing on only one of the key measures.

Because litigation funding is a financial product, the Menzies Research Centre's report says it should be properly regulated by the Australian Securities & Investments Commission.

It cites the example of how Federal Court judge Bernard Murphy refused to approve a \$42m settlement in a class action against Murray Goulburn until the funder, Omni Bridgeway, cut its commission from 32 per cent to 25 per cent.

Despite this reduction, the report found Omni Bridgeway disclosed a return on invested capital (ROIC) of 3.1 times its initial investment, that is a 310 per cent return on top of its investment, and an internal rate of return of “a staggering 624 per cent”.

“Despite being reduced, the final commission, which was approved as ‘fair and reasonable’ by the court, resulted in a return which was nearly 24 times the benchmark for ROIC returns for hedge funds and nearly 42 times the benchmark internal rate of return for private equity and hedge funds,” the Menzies Research Centre's report says.

To address that issue, the report recommends that a federal licensing regime should not only incorporate limits on the commissions that litigation funders can charge, but their returns should also be limited.

Instead of leaving it up to judges to make financial determinations without the benefit of statute or regulation, the centre's report says future returns for litigation funders should be benchmarked against private equity returns and should be measured using the same profit measures that are used by the funders.