

RELEASE TO AUSTRALIAN SECURITIES EXCHANGE (“ASX”)

THURSDAY, 4 DECEMBER 2014

**PRODUCTIVITY COMMISSION (“COMMISSION”) REPORT ON
ACCESS TO JUSTICE ARRANGEMENTS (THE “REPORT”)**

1. The Commission released its final report yesterday. Within the Report are the Commission’s recommendations with respect to “Private Funding for Litigation”.
2. The Commission rejected contentions that litigation funding facilitates unmeritorious claims and that funders take advantage of plaintiffs, finding no evidence that would lead it to believe these are current or likely future problems, or that the courts and regulators are not able to address problems if they emerge.
3. The Commission recommended that the risk that funders may not hold adequate capital relative to their financial obligations should be dealt with by requiring funders to be licensed as financial service providers.
4. IMF has previously held a financial services licence, and has long embraced appropriate regulation of funders around capital adequacy.
5. The Commission considered that the Courts are active and well equipped to deal with other risks concerning litigation funding and did not consider specific regulation was necessary to address these risks.
6. On fees charged by funders, the Commission concluded that “current commissions charged by funders appear commensurate to the services offered”.
7. The Commission recommended that damages based fees (where lawyers charge for their services by receiving a percentage of the recoveries) be permitted with certain safeguards, including limits to the fee. Importantly, it also recommended that lawyers and funders be treated equally before the Courts, so that the discretionary power to award costs against non parties is applicable to both.
8. It is far from certain that there will be legislation permitting damages based fees. Nevertheless, IMF has considerable experience, through its operations in the United States (where damages based fees are permitted) in providing funding solutions in such circumstances.
9. The recommendations and findings in relation to litigation funding in the Report are favourable to IMF’s business, which is well placed to satisfy any regulation along the suggested lines.



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