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MEDIA RELEASE

Legal system faces major challenges

AUSTRALIA'S legal system faces major challenges because justice is no longer accessible or affordable for many people and businesses, according to the founder of a Melbourne-based litigation funder.

Speaking at the Rotary Club of Downtown Auckland today, Quantum Litigation Funding managing director Greg Tilse said Australians had clearly defined legal rights but defending those rights was becoming more and more difficult.

He said it was likely similar problems with the justice system would start to emerge in New Zealand.

Quantum Litigation Funding, which is chaired by prominent New Zealand businessman Brian Stevenson, is now expanding into New Zealand and is in the process of financing its first legal action.

Mr Tilse said in Victoria the Small Business Commissioner had identified that bullying behaviour from larger more powerful businesses to towards smaller businesses was a real problem

Mr Tilse said deep-pocketed parties to a dispute were using their financial strength to ward off legal actions by employing delaying tactics.

"There can in fact be no single solution to such a multi-faceted problem, but litigation funding has genuine role to play," he said.

"It is one way you can overcome the significant power imbalances that lie at the heart of many disputes.

"I'm not saying that third party funding is the solution but I do believe that it is an important part of the solution landscape.

"Litigation funding is not just about class actions – though they might grab the headlines.

“It is mainly about assisting individuals, businesses and of course insolvency practitioners pursue a wide variety of deserving – not speculative – claims. “

Mr Tilse said European academics had found that the existence of a strong litigation funding industry improved the bargaining power of less powerful litigants.

“Although third party may not be used, defendants know that if the plaintiffs have a good claim they could get access to it and therefore defendants have to take each and every claim seriously,” said Mr Tilse.

“Now, there are costs associated with Third Party Funders and there are potential conflicts that can arise, of course there are. But the courts have recognized that these can be managed and they are small problems relative to the immense problem of an inaccessible justice system.”

Mr Tilse said he does not believe the emergence of litigation funders would lead to rampant growth in the number of court battles as has occurred in the USA.

“Will it go the way of America with rampant litigation growth? No,” he said.

“The cost-shifting rule in the common law countries – where the loser pays for the legal costs of the winner – means that speculative cases will not find their way into the system.

“Funders will only bring cases they are very confident of winning.”