

FAQ: CLASS ACTIONS

A class action is a legal proceeding brought by someone (**the class representative**) on their behalf, and on behalf a wider group of people who share the same claim against another party (**the class**).

A class action allows class members to have their common factual and legal issues dealt with simultaneously by the Court.

Class members will be bound by any decision of the Court, or by the terms of any settlement entered into, unless they elect to 'opt out' of the class action and bring their own claim.

How are class actions commenced?

There are three basic requirements that must be met to commence a class action:

- At least seven people have a claim against the same defendant.
- Each claim must relate to, or arise from, the same or similar circumstances.
- Claims must indicate at least one common issue of law or fact.

Once these requirements are met, the class representative may commence proceedings in Court effectively 'kicking off' the class action.

The Court rules that govern the class action will depend on the jurisdiction that the class action is commenced in (which Federal, States or Territories Courts). While the rules are broadly similar, there are vital differences so it is necessary to consider each class action and jurisdiction independently.

In Australia, the plaintiff in a class action does not require the consent of class members to commence a class action on their behalf, nor do they need to identify individual class members. This is known as an 'open' class action system and is different to the system in other countries with a 'closed' system which require class members to actively 'sign up'.

How do I know if I am a member of a class?

A person may be a class member if they are aware of the class action or not. Nevertheless, it is generally considered to be in the interest of the class action to identify and 'register' as many class members as possible. This means, the class' legal team will try and notify all persons who have been identified as potential class members and have them 'sign up'.

What happens if I 'opt-out'?

Class members can choose to 'opt out' of a class. Opting out means the class member will no longer be a part of the class, will not be bound by any outcome or determination, and will not be eligible to enjoy the benefit of any order, judgment or settlement in the class action.

A class member that opts out will be free to bring its own claim against the defendant. Opting out usually requires a prescribed form to be completed and lodged within a set period of time. This can vary between class actions and jurisdictions. Before opting out, the class member should check they can prove the elements of their claim and that the claim is still 'within time'.

What are main advantages and disadvantages of participating in a class action?

It is usually more convenient for a class member to have its claim dealt with by the Court alongside other class members who have been affected by the same circumstances. That convenience should be weighed against the time that it usually takes to resolve a class action, which can be slow-moving, and sometime not reach settlement or determination for several years.

Considerations should include:

- The scale of class actions - class members may be unlikely to receive more than 'cents on the dollar' for their claim.
- Loss of control over a class member's own claim - particularly if litigation funders are involved and are responsible for instructing the class' legal representation.

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How are class actions funded?

There are a few ways class actions are usually funded. Occasionally law firms will take carriage of a class action on a 'no win, no fee' basis. In others a litigation funder might take all the financial risk of the litigation away from the claimants, usually in exchange for a portion of the awarded damages. This is a reason class members usually will not receive a discount on the full value of their claim.

Other types of private funding include funding by the lead plaintiff, a subset of the group of claimants or joint funding through agreement between insurers and third-party funders.

What happens if the class action is successful?

Like most litigation, if a class action is successful and the class obtains a judgment in its favour, the Court will make orders for damages to be distributed amongst class members.

If it is unsuccessful there will be cost consequences, however costs orders are usually only made against the class representative, not all class members.

How does a class action settlement occur?

If a settlement can be reached with the defendant, then the class representative must apply to the Court for it to approve the settlement. This is not an automatic process and Courts may refuse to approve settlements for a number of reasons, including if it is 'unfair' to the class members.

If the settlement is approved a 'settlement distribution scheme' will be put in place to ensure the settlement amount is distributed amongst the class members. Individual class members are usually required to register to receive their distribution.

Can I just wait until there is a settlement to join the class action?

Because of the open class action system in Australia there is no need to 'join' a class action, however there may be a requirement to 'register' in order to receive a distribution of the settlement amount.

In rare cases, Courts may order compensation to non-members, but this is not guaranteed, and there will usually be a deduction for appropriate costs and funding commission. This is to make sure that no class member is 'better off' from the settlement than another.