

AUSTRALIAN CLASS ACTIONS RISE

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Legal Briefings - By **Damian Grave**

New report revealing trend towards shareholder claims.

As the class action mechanism in Australia approaches its 25th anniversary, a recent study presents some interesting findings about the Australian class actions environment. On 29 July 2016 Professor Vince Morabito from the Monash Business School released *An Empirical Study of Australia's Class Action Regimes Fourth Report: Facts and Figures on Twenty-Four Years of Class Actions in Australia*.

The Report, the fourth in the series, finds that:

- In the last six years 49.5% of class actions were funded by commercial litigation funders, an increase from 23.4% in the six years prior;¹
- On average, the number of class actions being filed in Australia has increased;²
- The predominance of product liability cases in the early days of the class action regime has been replaced by the prevalence of investor and securities class actions. Over the last 12 years 52.4% of all class actions commenced in the Federal Court comprise claims by investors or shareholders;³ and
- The time taken to settle a class action has increased.⁴

Professor Morabito's report provides further evidence that class actions and litigation funders are a well-established part of Australia's litigation landscape.

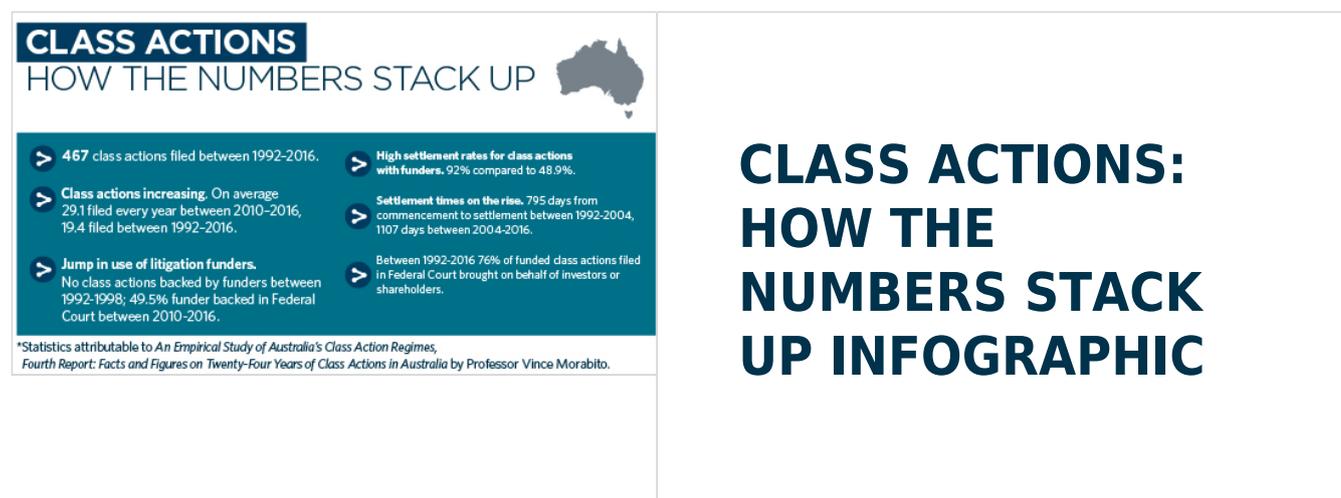
THE REPORT

THE REGIMES & NUMBER OF FILINGS

The first class action regime in Australia, Part IVA of the Federal Court Act was introduced by the Commonwealth Parliament with effect from 5 March 1992. This was followed by Pt 4A of the Supreme Court Act 1986 (Vic) with effect from 1 January 2000 and by Pt 10 of the Civil Procedure Act 2005 (NSW) with effect from 4 March 2011.

Professor Morabito's report shows that in the first 24 years of the regimes, 19.4 class actions were filed on average every 12 months.⁵ In the last six years this figure increased to an average of 29.1 class actions being filed every 12 months.⁶

The Report's findings suggest that the rise in the number of class actions being filed may be due to competing class actions being commenced in relation to the same or similar subject matter.⁷



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COMMERCIAL LITIGATION FUNDERS

The increasing role and influence of commercial litigation funders, observed by practitioners and corporate defendants over many years is also borne out in Professor Morabito's research.

In the first six years of the class actions regime in Australia not one proceeding was supported by a litigation funder. In the second six years, only 1.6% of class actions involved commercial litigation funders. This environment has now shifted with 49.5% of class actions commenced in the last six years in the Federal Court being funded by commercial litigation funders.⁸

Class actions involving litigation funders also had a higher settlement rate (92%) compared to unfunded actions at 48.9%.⁹

As we continue to observe, securities and investor actions continue to be the preferred type of class action for litigation funders, with 76% of funded Federal Court proceedings filed during the review period of the Report being brought on behalf of investors or shareholders.¹⁰ The rise in funding activity may in part explain the shift from the predominance of product liability cases in the early days of the Federal Court regime to the modern day prevalence of investor and securities class actions.

SETTLEMENTS

The Report identifies that on average, class actions that concluded in a settlement are taking a longer time to get there. The Report shows that in the first 12 years of the regime, the average time taken to reach a settlement was 795 days. In the second 12 years it took on average, 1107 days for the parties to reach a settlement.¹¹

CONCLUSION

Professor Morabito's report provides further evidence that class actions and commercial litigation funders have become a well-established part of Australia's litigation landscape.

Professor Morabito's full report and findings are available [here](#).

This article was written by Damian Grave, Partner and Leah Watterson, Senior Associate, Melbourne.

ENDNOTES

1. Morabito V. An Empirical Study of Australia's Class Action Regimes Fourth Report: Facts and Figures on Twenty-Four Years of Class Actions in Australia, July 2016 available here at 3.
2. Ibid at 8.
3. Ibid at 12.
4. Ibid at 9.
5. Ibid at 8.
6. Ibid at 8.
7. Ibid at 2.
8. Ibid at 8.
9. Ibid at 8-9.

10. Ibid at 9.

11. Ibid at 9.

MORE INFORMATION

For information regarding possible class action implications for your business, contact [Damian Grave](#).

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